CONSTITUTIONALISM: A TOOL OF ECONOMIC EXPLOITATION

A THESIS

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CHAPTER I

INTRODUCTION

Throughout the years, there has been a debate among constitutional scholars as to whether the American Constitution was a document creating a class or egalitarian society. The positions taken by the Founding Fathers on the idea of constitutionalism in 1787 served to shape the societal structure. This does not mean the society under the new Constitution was classless, non-elitist or non-racist. These traits were a part of the society before the drafting of a new Constitution.

The Founding Fathers united to create a new constitutional order with a strong central government and deep respect for states rights. Allen Barth's The Living Constitution, portrays the Constitution of 1787 as the most precious humanitarian document written in the history of America. He considers the document of great judicial value do to the induction of the Bill of Rights in 1791 to safeguard the liberties of all American citizens.

J. H. Laton's Spirit of the New Constitution, supports Barth's thesis that the Constitution, of 1787 was an egalitarian document. It was an instrument evolved to unite all

the dissenting factions of the society. Laton referred to the "We the People" of the preamble as a spirit of unity and togetherness. This spirit of unity and togetherness was expected to create a society sharing the problems of all and assisting in the promotion of the general welfare. Laton agreed with Barth on the role of the court in making the Constitution a useful document. The spirit of the new Constitution could only prevail in a society where the American courts eliminated racism and discrimination.

For proponents of the Constitution as an egalitarian document, concepts within the Constitution like due process, general welfare clause, and its many safeguards in the Bill of Rights were concepts and rights the legal institution system was obligated to defend. There was to be no favors or distinctions made between the rich and poor.

My thesis attempts to refute the argument by Barth, Laton, and other constitutional scholars. My thesis portrays the Constitution as an elitist and class document, which facilitates a classist and racist society. The Constitution was not an egalitarian document. It was an economic document wrapped in judicial clothing protecting the repressive forces of society responsible for the gap between the rich and the poor. It is fair to say the Constitution was only a symbolic tool utilized as a deceptive myth obscuring or concealing the poverty, inequality, discrimination

and injustice enforced by the American courts upon the relatively deprived.

I find myself in opposition to the constitutional proponents supporting the positions of both Allan Barth and J. H. Laton. I do not consider the Constitution an egalitarian document. It was not evolved to secure the minoirties from elitism, classism, or racism but instead to present a deceptive shield attempting to hide American oppression while promoting economic determinism at the expense of depriving others. My major hypothesis states that the Constitution serves and promotes the interests of an elitist and class society at the expense of the disadvantaged. It represents or symbolizes a judicial document framed to promote the economic interests of those with abundant wealth while the criminal justice system resorts to the Constitution as a repressor of minority rights. The criminal justice system has the responsibility for interpreting the law and punishing the violators. The Court has been dysfunctional in protecting constitutional liberties like the due process clause; fair and speedy trial; indigent right to adequate counsel; and protection against excessive bail. This has created a situation where the law has failed to extend to minorities their constitutional rights.

My view of the Constitution as a judicial document serving the interests of a classist society extends from

Charles Beard's theoretical orientation in his book, The Economic Interpretation of the Constitution. Beard portrayed the Constitution as an economic doctrine created as an elitist tool to promote and protect the commercial interests of the wealthy. The members of the constitutional conventions were not men of the oppressed sections of society. They were men of great personal and real assets. Their constituents were people of abundant wealth. The respective states shied away from ratifying the new Constitution until they were sure the Constitution would defend their commercial interests.

Beard rejected the idea that the Constitution represented a judicial document evolved to give safeguards for a democratic and egalitarian society. David Reisman's Abundant For What? calls American constitutional democracy a myth that has allowed a few to find abundant wealth while others scratch the surfaces of the soil to survive. He agrees with Beard on the idea of the Constitution being evolved only to preserve commercial interests and profits. The owners of abundant wealth were searching for a constitutional order obligated to preserving their economic demands at all cost. Since the Constitution of 1787 has only directed its attention to the commercial desires of the rich, Reisman believes it is a fallacy to call the Constitution a judicial supporter of human rights.

Donald Handlin's Many Faces of America, attacks the Constitution on the grounds that it is a document only

responsive to the demands of the competing pressure groups. Handlin admits that the response is always given to the interest groups with the most abundant capital, skills, influence, resources and access to information. These interest groups with inadequate capital and resources cannot expect their demands to be rapidly met. It is the AMA, ABA, AFL-CIO, and representatives from all industries and large corporations utilizing their abundant capital to make the Constitution and the government work them. Handlin portrays Barth's living Constitution as just a voice of competing interest groups.

In my analysis of the nature of the Constitution, I will examine the role of the Constitution within the corporate setting, criminal justice system, and the success of disgruntled minorities to find an alternative to the established American Bar Association. The members of the Bar represented the legal technicians interpreting and providing the guidelines for judicial opinions, decisions, and the norms of the legal profession.

A historical study of the classics will provide an assessment of the type of Constitutional order the early political philosophers supported and their position on the concept of constitutionalism. Their ideas played an essential role in the shaping of the society, state political structures, and the basic material or economic interests of

the members of the society. This makes it extremely important to analyze the constitutional order they proposed as best for the actual state and to attain an understanding of why they supported their proposed, constitutional orders. The ideas of Plato, Socrates, Aristotle, Locke, Machiavelli, Rousseau, and Hobbes while providing constructs for ideal states also became detrimental in the forming of the actual state. The first chapter becomes very essential for detecting the economic orientations within the philosophies of these writers to decide whether they were supporters of a constitutional order based on egalitarian society or a class society.

The second chapter examines the role of the corporate structure in the corporate structure in America to see whether Beard was right when he said the Constitution was purely economic. It becomes essential to analyze the role of the corporate structure in the impoverishment of the disadvantaged in understanding the relationship. An analysis of the constitutional order is required to see whether it prevents illegitimate actions of the corporate structure that lead to poverty or whether it is only a vehicle responsive to the demands and goals of the monopoly capitalist. The question arises; does the due process clause, constitutional amendments of self-liberties, and equality work to insure human rights or repress them?

The third chapter examines our criminal justice

system to analyze its involvements with the coporate world and the oppressed. It becomes very important to evaluate the amendments such as the right to counsel, fair trial, protection against excessive bail, and the due process clause to determine its effectiveness in protecting the liberties of the poor. Beard's idea appear again to see whether the Constitution and its American Bar Association protectors are utilizing both the Court and the Constitution to protect elitism, classism, and the racism of the capitalist system toward the disadvantaged. The final chapter simply analyzes the impact of alternatige minority organizations in striving to use their legal expertise to use the Constitution to assist and uplife the liberties of the underprivileged.

CHAPTER II

HISTORICAL PORTRAIT OF CONSTITUTIONALISM

When one considers the process of constitutionalism as a focus of criticism, it is wise to develop a historical portrait of the types of constitutions expressed by men such as Plato, Aristotle, Locke, and Rousseau. All civilian governments have implemented some form of legitimate laws, either written or unwritten, and the societal members were expected to obey those laws. In the history of constitutional orders, we find charters, constitutions, and written laws, or solons coming from the king.

The earliest ideas of law and constitutionalism developed from the classic debates between the proponents of natural law and conventional law. The former supported a belief in a supernatural being as the creator, choosing leaders by Divine Rule. The latter advocated the right of men as rational beings to formulate the laws that were necessary for a stable society.

Proponents of conventional law defined the authority of the state as the faithfulness with which the will of the nation is transmitted by the structures it has created. It attributes the destiny or direction of the nation to the

conventional statesmen who represent the policymakers of the nation. The proponents of conventional law considered man-made rules the only successful tool for regulating the society. They opposed natural laws because the natural laws advocated the acceptance of dogmatic principales which could not be observed or investigated. The conventional laws represented the highest order of the state. If there was a supernatural being dominating the lives and thoughts of men, he was inferior to the state or superfluous to the governance of the state. Therefore, the ordinances of man governed the entire society, including the church. The idea of constitutionalism found its birth in the minds of the proponents of conventional law. The ideas of constitutional orders during the philosophical writings of men such as Socrates, Plato, Aristotle, Hobbes, Locke, Machiavelli, and Rousseau. The political philosophies of these men paved the way for a better understanding of governmental operations.

The Philosophies of Constitutionalism

In order to attain a clearer conception of the idea of constitutionalism, it is necessary to develop some type of classification scheme for the early political philosophers. They will be placed in the classification scheme according to their preference as far as constitutional order is concerned. The categories assigned to the constitutional order are oligarchy, democracy, dictatorship, and a mixed constitution.

The mixed constitution consists of a blending of the democratic form of government and oligarchy. Most of the constitutional concepts used will be explained in the philosophical discourses.

Chronologically, Socrates preceded all the other political philosophers used in the portrait of constitutionalism. He is considered the Father of political philosophy. The classical thoughts have exemplified a movement away from natural law to a proposal for conventional law. In the words of Socrates, "Man is the measure of all things that exist."[1] Man is a reflection of his environment, the world around him, and one must acquire an understanding of the natural phenomenon to comprehend the inner thoughts of men. Those of us seeking for knowledge must turn to science to allow us to distinguish what is and what ought to be.

The knowledge of law stems from the senses of men and it is strictly a human enterprise. Conventional laws must be instituted to contain the abuses and evils of men. Socrates considered law a rule of strength and not necessarily a rule of rights and justice. In every city - state, the ruling class made the laws that it deemed more conducive of its own advantage. All of Socrates' ideas were verbally

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[1]Bernard Smith, Books that Change Our Minds, (New York: Schuster and Co., 1963). p. 12.

expressed. These ideas were transmitted and expanded by his student, Plato. Plato's ideas were later unravelled by his student, Aristotle. Socrates was a firm believer in the virtuous leader or the so-called philosopher-king. This philosopher-king was a well educated man who had the best interest of the state at heart. He was recruited because his extensive knowledge in philosophy, mathematics, humanities, science, and logic was well known.[1] The philosopher-king was chosen because he was the best educated citizen in the state. Socrates did not approve of the Athenian democracy permitting each citizen to occupy the presidency each day.[2]

Socrates believed the philosopher-king was the only one who possessed the skills for the job. The Athenian democracy would allow the unskilled citizen to operate the political structures of the state. He considered the average citizen or the unskilled people without the knowledge to undertake the task of state administration. His opposition toward the Athenian democracy led to the Socratic thought that virtue, political virtue not excluded, is knowledge, or that knowledge is virtue.

Socrates' complete dependence on an intellectual state policy places him in the category of supporting the dictorial or

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[1]Smith, p. 23.

[2]S. H. Laton, The Spirit of the New Constitution (New York: Washington-Burns, Inc., 1969), p. 433.

monarchial constitution. Socrates placed the destiny of the state in the hands of one man. There was nothing to restrict his power or to safeguard the society against his abuse of power.

In attaining an understanding of Socrates'support of a dictatorial form of constitution, it is essential to define and distinguish constitutionalism from the other governmental orders. A constitutional order is a governmental structure presenting the principles, laws, legal codes, junctions, and responsibilities of government. A democracy is a constitutional government, created to protect the liberty, rights, and property of the common people. An aristocracy concerns itself with only the interests of the rich. A tyranny is a dictatorial form of government with an omnipotent ruler unrestricted by the law. The oligarchy is defined as a government by a wealthy few at the expense of the poor. A government guided by a constitutional construct was designed to contain the natural greed of men. The laws were said to be superior to all men.

Plato: The Father of Political Science

Plato, a student of Socrates, picked up the pieces after his teacher was executed by the state. Plato was one of the bright young students who attained an interest in the study of Socratic thought. Plato also advocated the recruiting of the virtuous leaders. He believed the leader should be a

man of skills, wisdom, and the highest degree of education.[1] The virtuous leader according to Plato is a man dedicated to the best interest of the state. In his book, The Republic, Plato refers to the leader as the philosopher - king.[2] He is an aristocratic leader attempting to build the state on justice and equality. Plato's philosopher - king is chosen on the basis of superior ability. By using this procedure only a select few will possess the qualities of leadership. Education was a very valuable tool in Plato's state. Therefore the citizens and the philosopher - king should obtain virtues such as wisdom, courage, temperance, and justice.[3] Education was confronted with the task of developing such qualities.

The good state depends on the creative ability of the philosopher - king to maintain stability. He is superior to the law with the ability to apply his wisdom in any particular case. The philosopher - king is the supreme lawmaker, executing, legislating and interpreting the law. He is also responsible for the violators.

In Plato's book, The Laws, he diverts from the idea of a dictatorial ruler having no constitution restrictions limiting his authority. He introduces the idea of constitutional rule. It is a rule based on a fixed, written, inviolable law applied

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[1]James Burns and J. W. Peterson, Government By the People, (New Jersey: Prentice - Hall, Inc.,1972) p. 503.

[2]Laton, p. 438.

[3]Laton, p. 447.

to all. Plato says "in an actual state more practical than the ideal state, a philosopher - king may not arise, and the more practical form of government is the supremacy of the law."[1]

Plato divides his constitutional orders into three classifications: (1) monarchy; (2) democracy; and (3) aristocracy. He describes the monarchy as a government ruled by a single person, a democracy as a government ruled by the common people, and an aristocracy as a government ruled by the rich and a competent few.[2] Plato considers a monarchy as the worse form of government because it typifies a tyranny where a powerful ruler dictates the policies of the society.[3] A tyranny, like the dictatorial form of government, represents one man rule with no regard for the common people. An aristocracy is a government representing the wealthy elites. He critcizes the aristocracy for the very same reasons.

Plato considers a constitutional democracy as the least dangerous form of government concentrating on the aspirations of the common people.[4] It is a government characterized

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[1]Burns, p. 523.

[2]George Sabine and Thomas Thornton, A History of Political Theory, (Chicago: Dryden Press, 1973), p. 164.

[3]Sabine and Thornton, p. 70.

[4]Sabine and Thornton, p. 84.

by such qualities as liberty, justice, and equality. Democracy would be the best form of government for eliminating a dictatorial society and the unresponsive leader. Plato rates the mixed constitution as the best form of government in the actual state.[1] A mixed constitution brings together the common people's democracy and the government of one man rule.[2]

Plato's support of the mixed constitution presents a major deficiency. He omitted the fact that men empowered to make and break the law become superior to those laws.[3] Men with unrestricted authority can manipulate the law to protect their private interests. Plato's mixed constitution is actually a government dominated by the wealthy. He did not envision the impact of the powerful ruler.

Plato, like his master Socrates, assumed that the statesman is an artist with the rule because he alone knows what is good for the state.[4] This definition was backed by a strong argument in favor of political absolutism, in case the ruler is really an artist at his work:

> "Among forms of government that one is preeminently right and is the only real government in which the rulers are found to be truly possessed of art, not merely to seem to possess it, whether rule by law or without law, whether the subjects are willing or unwilling."[5]

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[1]Sabine and Thornton, p. 109.

[2]Matthew Platt, Our World Through the Ages (Seattle: Mullington and Company, 1970), p. 27.

[3]Platt, p. 30.

[4]Platt, p. 35.

[5]Sabine and Thornton, p. 206.

Plato felt the ruler should not have his hands bound by the laws he created.[1] The ruler, or philosopher-king, could not be an effective leader if the law prohibited his efforts as a lawmaker and enforcer. In complete congruence with Socrates on the role of the ruler, Plato, in the Republic, focused around the decision and ideas of the philosopher-king. Both political philosophers can be charged with creating a state incapable of meeting the demands of the common people. The constitutional order utilized in the state is not a reflection of a mixed constitution, but instead it reflects a dictatorial or monarchial government.

Aristotle and Succeeding Writers

Aristotle is the student of Plato searching for corrections to the inconsistencies of his teacher. The political ideology of the teacher played an influential role in the writing of the student. Aristotle, like Plato, wanted a state constructed by the seeds of virtue.[2] He stressed the point that the law could not be left to the discretion of one man. This would entail too great a risk. Aristotle describes his state by saying: "It is a state where men have a mutual affection for one another in a community setting with each man dedicating his efforts to

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[1]Leonard Greer, The History of Political Thought (New Jersey: Coleman and Company, 1966), p. 241.

[2]Greer, p. 248.

creating a partnership of free, virtuous happy men."[1]

In considering the state a natural community, the citizens have the collective responsibility of contributing to the development of the best possible state. Aristotle placed a great deal of faith in an oligarchy. He believed a government led by a select few was able to control the actions of the common man and decide whether their demands would be fulfilled. He defines the constitution as the sould of the state, forming the arrangement of magistrates in a state.[2] The nature of the constitution is determined by the ruling class. Each class would be given the choice to decide what constitutional order protects their interests best.[3] At the time Aristotle wrote, the Greek city of Athens was in the midst of a power struggle among the classes within the society. The struggle was caused by economic differences within the Greek society produced the gaps in the living conditions of the citizens. Plato and Aristotle were criticized for their blindness to the power factor in politics.

Aristotle divides his constitutional order into four classes: (1) tyranny; (2) aristocracy; (3) oligarchy; and (4) democracy. In an aristocracy, the role of the

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[1]Greer, p. 254.

[2]Harriet Fuller Smith, Our Life as a Citizen (New York: W. W. Morton and Company, 1967), p. 7.

[3]Smith, p. 18.

leader in the state is determined by outstanding citizenship and wealth. Oligarchy is defined as the rule of the rich who have preferential rights due to wealth and nobility. The government consists of a wealthy minority uncontrolled by the law. The oligarchy is considered better than a tyrannical government because it represents a mixed constitution. Aristotle acknowledged the similarities existing between the two forms of government. The mixed constitution consisted of a government led by the rich but responsive to the needs and demands of the common man. The tyranny, according to Aristotle, contains a ruthless monarch or leader with unlimited power. The tyrant simply neglects the rights of the common man and builds a government that caters to the needs of the rich. Aristotle considers the tyranny the worse form of government. The next constitutional order is the democracy composed of a group neither virtuous or rich. The distinguishing feature of this constitution is respect for the law. Aristotle analyzes the constitution of the ideal state and he agrees with Plato that the mixed government is the best form of government.[1] His mixed constitution is said to be a combination of democracy and oligarchy. He says the administration of government should be left to the wealthy and well-educated.[2]

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[1]John Frieden, The History of Western Thought, (New York: Random House, 1963) p. 500.

[2]Frieden, p. 511.

The state should allow the competent members of the society to rule.[1] The common people will share in the making of the decisions and laws. Aristotle suggests the conciliation of a government that reflects on an oligarchy and democracy allowing the fusion of such elements as wealth, liberty, privileges and equality.[2] In reference to the success of the mixed constitutions, Aristotle remarks; "The more perfect the mixture of the political elements the more lasting will be the constitutions."[3]

Aristotle's mixed constitution has been criticized for creating a ruling class above the dissent of the common people. They are embodied with the power to regulage the government on their own behalf. Aristotle's constitutional order does not provide the democratic principles of liberty, justice, and equality. The mixed governments contained an abstract democracy that never appeared in the actual state.

The mixed government favored by Plato and Aristotle creates a structure advantageous to the owners of private property. This political structure primarily serves the needs of the private sector. Plato and Aristotle proposed a government led by the rich with the ulterior motive of gaining profits.[4] One has to wonder whether these men gave

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[1]Frieden, p. 257.

[2]Frieden, p. 534.

[3]Frieden, p. 511.

[4]Sabine, p. 339.

enough analysis to the strength of the ruling class as property owners and repressors of activism. The ideas of Socrates, Plato and Aristotle set the stage for the classical thoughts on issues like government, constitutions, the responsibility of the state, the role of the citizens, and the ingredients for creating order in the actual state.[1]

It is also essential to analyze the works of men like Locke, Hobbes, Rousseau, and Machiavelli, to detect their attitudes on the idea of constitutionalism. They wrote during the ages of Enlightenment and Reason. The writers were said to be more consistent, logical, and scientific than Plato, Aristotle, and Socrates. The same chronological scheme will be utilized to place them in their appropriate time periods. They wrote during eras like the Glorious Revolution, the Age of Enlightenment, and the Age of Reason. These are the ideas of philosophers preceding the American Revolution and the rise to nationhood. It also presented America with a blueprint for creating her first government and Constitution.

Their methods were intended to be more reliable, valid, and scientific than the classical writers responsible for the standards of social science. It is very significant to explore the political ideas of those philosophers writing

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[1]Alpheus Thomas Mason, Free Government in the Making (New York: Oxford University Press, 1965), p. 251.

in the Age of Reason and rediscovery because this period marked an era characterized by an attempt to better understand the world by using reason and logic.

John Locke, in his Second Treatise, considered government a contract made between the state and the people.[1] In the contract, the people would extend to government the authority to set the laws in exchange for protection of their civil liberties. His constitutional order gave the people the right to disband the contract if the government does not keep its end of the bargain.[2]

In the Lockian state, one of the central functions of government is the protection of private property.[3] In categorizing Locke's constitutional order according to the classification scheme introduced in the discussion of the classical writers, Locke's government was designed to be a democracy. In the long run, it is essentially an oligarchy led by large property owners. Locke's ideal state gives birth to the use of elites. These elites would control the economic structure of economic exploitation.[4]

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[1]Mason, p. 257.

[2]Mason, p. 261.

[3]Mason, p. 270.

[4]William Y. Elliot and Neil A. McDonald, American Democracy (New York: Prentice-Hall, Inc., 1969), p. 261.

In his two treatises on government, he describes the qualities expected of the leaders. He opposes despotic rule by saying:

> "Despotic Rule is absolute power of one man over another, take away his life whenever he pleased, and this distinction between one man and the other no compact can convey."[1]

Locke considers despotic rule a tyrannical power defining it as usurpation of power leading to the abuse of the common man.[2] When the government does not defend their rights a new government should be established providing safety and security. Rebellion, protest, and insurrection are justified when the government intrudes into the lives of citizens bringing corruption instead of democracy.[3] The most important merit of his theoretical state is the rights of the people to resort to civil rebellion. When the state refuses to defend the rights of the people within a democratic society, the common people have the right to utilize civil disobedience.[4] The legal protection of the private sector permits the rights of the property owners to supercede those of the oppressed. Locke fails to understand that a government submissive to the demands of

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[1]Elliot and McDonald, p. 290.

[2]Elliot and McDonald, p. 303.

[3]Elliot and McDonald, p. 315.

[4]Arthur Sutherland, Constitutionalism in America (New York: Harper & Row, 1969) p. 601.

the property owners would increase their profits while depriving the rights of the impoverished. Therefore, his constitutional order designed to protect the life and liberty of society only includes the large property owners and not the common people.

Locke's opposition to the despotic ruler becomes inconsistent because the desire to protect and secure private property will lead to an aristocracy or oligarchy. The Lockian model presents a clear strategy for containing the conflicts between large land owners and small land owners. Although the society has formed a social contract with the state for security, Locke does not envision the need to create some type of mechanism to prevent the large property owners from attaining their interests at the expense of the small land owners or home owners. Locke considers the state an agent concerned with the welfare of all and not a select few. Locke's model does not eliminate the selfish greed nor prohibit it, but instead the law defends it. While Locke's defense of liberty is commendable, there is a failure to evaluate the strength of the large property owners to create an actual state, responsive to the aspirations of the rich.

Locke's view on private property is very essential in understanding the type of society found in his ideal state. Locke believed the state had the obligation of protecting private property with rigid laws and severe

punishments. In his Second Treatise, he introduces the labor theory saying any section of property or land a man placed his energy and labor in was his private property.[1] The fruits and harvest produced from his labor did not have to be shared with anyone. When a man placed his labor in a particular section of land, it did not belong to the community. He had earned the right to claim the profits of the land. Locke's society eventually becomes classist and elitist.

Machiavelli, an Italian writer in the Fifteenth Century, was a proponent of Italian nationalism and the author of The Prince. He wrote in an age called the Renaissance. This new age focused on man as the center of the universe and not the super-natural.[2] Man was a rational being using reason to perfect society. The Lockian state is created by the rationale of man.[3]

Machiavelli, unlike Locke, considers a despotic rule the best form of government to contain the evils of men. Machiavelli writes in The Prince, "The only feasible government is a princedom, ruled by a single individual with an iron hand."[4] His prince or despotic ruler falls

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[1]Southerland, p. 610.

[2]Southerland, p. 619.

[3]Southerland, p. 627.

[4]Sabine, p. 565.

in the category of a monarchy or tyranny when the classification of this constitutional order is considered. In Machiavelli's monarchial government, he uses the prince as the ruthless leader enforcing and creating the law. Machiavelli crowns the king or prince as the only ruler capable of containing the corruption of men.[1] The prince had the power to pass rigid laws without abiding by them. Machiavelli attempts to justify the existence of his prince by saying, "Nature has created men in such a manner where they desire everything but are unable to attain it."[2] The prince, as the absolute monarch, possessed the legitimate right to pass ordinances stringent enough to gain respect and obedience from the masses. Machiavelli visualizes the prince as the only man capable of maintaining stability in an Italian regime. The princedom or the government of the prince was a tyranny. The prince ruled with unrestrained power.

Machiavelli advocated the separation of religion and politics. In the Machiavellian state, men utilized the ability to discover and to forsee future movement in order to prevail himself of it or offset it.[3] Religion or things of a sacred nature must be superceded by the state.

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[1]Sabine, p. 573.

[2]Sabine, p. 590.

[3]Merla P. Pursey, The Limits of Freedom (New Brunswick: Rutgers University Press, 1959), p. 80.

Machiavelli believed religion should not be permitted to influence the state through the regulation of laws.[1] The establishment and maintenance of the commonwealth can only be protected by the ruler, not by the church or supernatural being.2 The prince manipulated the church into subjecting itself to the will of the state.

Machiavelli's constitutional structure permitted the lawmakers to bypass the liberties of others. He understands the need to separate the chruch from the activities of the state, but he places the destiny of the people in the hands of a ruthless leader. The prince defines activities of the political structure, the law and the setting or punitive measures utilized against law breakers. Machiavelli does not foresee the problems caused by having a state with an iron hand ruler with no laws or rules to govern his actions.[3]

He creates a constitutional order where the prince will automatically concern himself with the interests of the private sectors because they possess the wealth of the society. The interest of the general public and their liberties will not be included in the political structure headed by the prince.

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[1]Pursey, p. 85.

[2]Pursey, p. 93.

[3]Michael Harrington Western Political Philosophy, (New York: Random House, 1961) p. 27.

It is the general public who gets short changed by Machiavelli's prince.

Thomas Hobbes, a political writer succeeding Machiavelli in the 17th Century, gives his model for state govenment in his book entitled The Leviathan. Hobbes wrote during the English Revolution when Henry VIII had seized the church.[1] He was inspired by a desire to end the impact of the church in England.[2]

Hobbes, like Machiavelli, advocates man's reasoning as the most productive weapon controlling the destructive instincts of men. He also introduces a social contract distinctly different form the Lockian contract. Hobbes' contract consisted of a political association called government created to answer man's quest for safety and deliverance.[3] This authority provided the needed check on man's selfish tendencies. The contract was formed with complete trust in the government to respond to their will. The constitutional order of Hobbes consists of three parties. The three parties are the state, citizens, and ruler. The ruler or sovereign is the third party who is not a party of the pact but instead a result of it.[4] Hobbes describes the unrestricted

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[1]Harrington, p. 37.

[2]Harrington, p. 43.

[3]Harrington, p. 49.

[4]John Abbo, Western Political Ideas, (New Jersey: McCormick & Co., 1973). p. 300.

power of the sovereign by saying, "For the sake of peace and protection, men have ceded everything except the inalienable right of self-defense."[1] The power of Hobbes' ruler is not shared with a legislature or assembly. He is the only law-maker, enforcer, and interpreter.

Hobbes does not give citizens the right to exercise civil rebellion or dissolve the contract. At this point, the Hobbesian contract differs from the Lockian contract. Locke gave the citizens the right to break away from the contract when the government failed to keep its end of the bargain. If the government became corrupt and disordered, Locke claimed the people had the right to resort to revolutionary tactice, that is civil disorders, protests, or whatever means are necessary to restore stability and order.[2] The Hobbesian contract gives the sovereign a lifetime guarantee of tyrannical power.[3] There is no way the people can remove him. Therefore, he is an omnipotent figure until death. Hobbes does not mention the application of revolution as a weapon for disbanding the contract.

The Hobbesian contract representa a constitution reflecting a monarchy capable of containing the Catholic church.[4] He views the church as a competitor of the state in

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[1]Abbo, p. 331.

[2]Sabine, p. 507.

[3]Sabine, p. 511.

[4]Abbo, p. 417.

the regulation of laws and the implementation of public policies. The church, for Hobbes, was a subordinate agent of the state. The only constitutional order Hobbes recommends is a monarchial government led by an all powerful dictator. This dictator controls the destiny of the church and of the state. He has the legitimate right to keep the church in its place., Hobbes classifies the monarchy as the best form of government for maintaing stability and order.

His major task was to form a government strong enough to safeguard the individual freedoms of men. Instead Hobbes creates a constitutional monarchy led by a ruthless and unrestricted sovereign. The sovereign is expected to be responsive and sympathetic to the rights of the masses. With no laws to contain his abuse of power, the sovereign can use this unrestricted power for personal gains. When the choice of dissolving the contract is placed before them, they will have no other choice but to release themselves from Hobbes' political master.[1] Revolution will be the only thing capable of destroying the pact.

The most important criticism of Hobbes' model is the failure to see the similarity between the church and the soverign. Both the church and the sovereign represents dictatorial forces using the law for selfish gains.[2]

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[1]Allen Carlton, The Price of Freedom (New York: Harper and Row, Inc., 1970), p. 56.

[2]Carlton, p. 64.

With the unlimited authority of Hobbes' sovereign, there would be no way to contain the egotistic greed of the ruler. Sabine explains it best in The History of Political Thought by saying, "the loss of true individualism and social freedom, the total surrender of all rights to the sovereign, is too great a price to pay for mere physical safety.[1]

Ideas of Jean Jacques Rousseau

The Frenchman Rousseau bypasses the individualistic approach used by Locke, Machiavelli and Hobbes. He attacks the political thought of these writers because of their concentration on the needs of the individual instead of the community. Rousseau develops a government formed by the consent of the general will.[2] The general will refers to the voice of the community as a decision making legislator and protector of civil liberties. The law of the society becomes the community law representing all the citizens. Rousseau favors community law, because the entire body is incapable of unjust laws, "for no man will be unjust to himself."[3] In Rousseau's ideal state, man sacritice their personal rights to protect the interest of the community.[4]

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[1]Carlton, p. 71.

[2]Allen Barth, The Living Constitution (Michigan: Sandburg Publishing Company, 1967), p. 13.

[3]Barth, p. 19.

[4]Barth, p. 23.

In Rousseau's ideal state, he opposes the possession of private property. All of the property will be shared by the community with no one person claiming any section of land. Under the community law, property and government within the state reflects the decision of the general will.[1]

Rousseau's ideal of community law or a collective society encounters many criticisms. There are a few significant factors he refused to consider; (1) Is it possible to develop a collective society with all the members of society on an equal level? (2) Can a government formed around the general will of the society contain the authority of the ruler they select?

In answering the first question, it is impossible to develop a society as collective as Rousseau expects. Rousseau expects a society where men are concerned with the needs of each other. He loses the thrust of his argument when he talks the selection of the sovereign by the community.[2] Rousseau never admits the fact that the sovereign is given complete legislative authority.[3] When Rousseau introduces the idea of a ruler and assembly chosen by the general will, his communal and democratic society is replaced by an oligarchial society dominated by elites. Rousseau

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[1]Barth, p. 27

[2]John Hansen, The Dimensions of Liberty, (New Brunswick: Rutgers University Press, 1963). p. 121.

[3]Hansen, p. 128.

was blind to the power of the ruler and the assembly in implementing public policies capable of protecting their personal needs and not necessarily the desires of the community. Rousseau refers to the community as the outside wheels of government. He presents the community with the exclusive authority of defining the law while the state sovereign (the ruler or prince) executes the law the community has approved.[1] Rousseau fails to see the reconstruction of the society is not this simple. He wants to tear down the existing institutions and then rebuild new ones. The problem is that it is not clear how Rousseau attempts to rebuild them. It is also not clear how Rousseau will interject his idea of a communal society into institutions built on classism and elitism.

After the community selects the leader and the assembly, this is the only and the last crucial decision the community will be making. His intentions were to construct a democratic constitutional order by creating a collective government of the people and by the people, but instead he creates an oligarchy led by a powerful few.[2] His major desire to create a government submissive to the desires of the general will is lost in his misconception

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[1]Norman Thomas, Political Choices,Decisions and Philosophies, (New York: Washington - Burns, Inc. 1969) p. 146.

[2]Thomas, p. 448.

of resources needed to build a collective society. Rousseau serious believed that a communal society with emphasis on community rights would end the individualistic greed that leads to classism and elitism. It is elitism and classism that creates a society where property rights eventually are more significant than human liberties. Although Rousseau's intentions were good, his model for a collective society did not provide the preventions needed to eliminate capitalist greed.

American Constitutionalism

After the writing of the Declaration of Independence in 1776, and the revolution which freed the American Colonies from the British usurpation, the independent colonies met to form the Articles of Confederation. Americans came to learn and cherish the Declaration of Independence as one of the most sacred documents of their history. The document created by the members of the First Continental Congress in 1776 came in response to the popular will.[1] The people were not unmindful of the vast responsibility they were assuming. They knew a long bloody war could follow that meant suffering and sacrifice, vacant chairs at the fireplace, widowed mothers and fatherless children.[2] They saw the light of revolution. They realized the price of their

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[1] Thomas, p. 453.

[2] Thomas, p. 460.

action and the Americans felt it was worth the cost. As one writer wrote, "America was never so great as on the day of Revolution."[1]

During America's rise to nationhood, a constitution was one of the elements a new nation required. Americans did not want the same type of government found in the mother land. They wanted a constitutional structure where it would be explicitly stated in the documents that the federal government had only those powers expressly and those necessarily implied.[2]

The Founding Fathers of the nation did not want to make the same mistake again of placing too much power in the central government. They wanted to create a constitutional structure with limits on the central government. Therefore, the Founding Fathers favores extensive power within the state. They were basically supporters of state rights. In reality, it was the state governments conducting the political and economic affairs of the people. The common people did not want a strong central government because they believed it would operate in the interests of the rich.[3]

The Articles of Confederation was adopted shortly after the Declaration of Independence on July 4, 1776 as the first form of constitutionalism in the United States

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[1]Arthur Wienberg, A History of the Classics (Chicago: Mullington Press, 1964, 1964), p. 397.

[2]Wienberg, p. 406.

[3]Wienberg, p. 412.

which now consisted of the thirteen former colonies.[1] The Articles of Confederation marked the birth of a country once under oppression.

Unfortunately, the new government confronted difficulties. The Articles established a central government with limitations on its powers and responsibilites. The central government could not levy taxes, regulate commerce, pass laws without the approval of the state, or control the monetary system in the country.[2] There was no executive or judicial branch of government, and only one house in the Congress. Each state regulated its government without intervention from the central government.

The Second Continental Congress could not raise the money or organize an army without the consent of the states. The powers of the Congress to regulate foreign policies were weak due to their failure to win respect abroad. Thomas Jefferson, serving as minister of France, wrote home that he could not get the French to take him seriously.[3] All these defects along with the quarrels among the thoughtful men caused people to fear for the existence of the central authority.[4] The desire of the Framers to form a constitution-

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[1] Wienberg, p. 423.

[2] Sabine, p. 438.

[3] Sabine, p. 461.

[4] Walter Cooperman, Conflict and Cooperation, (New York Simon & Schuster, 1966), p. 60.

al order with more influence from the state and interference from the central government backfired. America's first constitutional order had to be dissolved and the framing of a new constitution was in the making.

The federation was too weak to unite the states. Each state maintained its own coining systems, methods of taxation, and rules for enforcing its own government.[1] The states consistently debated over the issue of power to regulate their own international affairs. This controversy led to conflicts between the small and large states. The central government was not strong enough to compel the states to abide by its laws. The alienation of the states eventually led to the forming of a new constitution. The national government had to defend the law if nationhood was to become a reality.

On May 14, 1787, in Philadelphia, George Washington, Alexander Hamilton, and other men urged actions to strengthen the central govenment.[2] These men saw the consistent quarreling among the states as a sign of a crumbling nation. They seriously feared the new nation would perish unless the states formed a strong organization.[3] The delegation was composed of men with extensive experience in government. Some were lawyers, congressmen, and others had served as

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[1]Cooperman, p. 65.

[2]Cooperman, p. 71.

[3]Cooperman, p. 79.

governors. Nearly thirteen of the members had served in the First Continental Congress and signed the Declaration of Independence. The delegation consisted of fifty percent college graduates with an average age of forty-six.[1]

The constitutional delegates were divided on what appropriate action to take as some states refused to come to the convention and only thirty-nine members signed the original draft of the new constitution.[2] Members of the small states favored a plan called the New Jersey Resolution because it proposed equal representation for states. William Patterson of New Jersey was the author of the New Jersey Resolution. Under Patterson's plan all the states would be represented equally regardless of size.[3] This would allow the smaller states to have a voice in the operation of government and they would not be forced to surrender to the will of the larger states. Naturally, the larger states opposed such a plan because they felt they had a right to have a greater voice than the smaller states. Edmond Randolph presented the Virginia Resolution stating the plan favored by the larger states.

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[1]Cooperman, p. 84.

[2]James Protho, The Politics of American Democracy, (New Jersey: Prentice-Hall, Inc. 1971). p. 136.

[3]Protho, p. 43.

The plan called for a government with representation based on population.[1]

As the quarrel between the proponents of the larger and smaller states continued, delegates of both groups realized the Articles of Confederation could not be revised or corrected. The only way to unite the states in a strong central government was to set aside the old plan and begin a completely new one.[2] The delegates opposing the idea of a strong central government left the convention because of the possible encroachment of the central government on the rights of the states. Many of the delegates remaining were discouraged with the proposal of a new constitution with a strong central government. The arguments became so heated at times that the leaders feared the whole convention would collapse. Washington finally spoke these words to the delegates:

> "If to please the people we offer what we ourselves disapprove of, how can we afterward defend our work? Let us raise a standard to which the wise and honest can repair. The event is in the hands of God."[3]

The final document was a collection of compromises. No one, not even Washington, approved of everything in it.[4]

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[1]Protho, p. 53.

[2]Protho, p. 91.

[3]Protho, p. 107.

[4]Cooperman, p. 128.

The most historic compromise made by the constitutional delegates was the idea of a federal system. Some of the delegates believed the confederation could have worked had it been revised. The idea remained favorable because it allowed the states to maintain all of its powers. Others proposed a centalized or unitary government with exclusive power in the hands of the central government. The delegates compromised by forming a federal system, dividing responsibility between the states and the central government. This was known as Federalism. The idea of Federalism is considered one of the most important features of American government.

The Constitution of 1787 containing a federal system divided the powers into categories such as reserved, delegated, concurrent, and forbidden. The delegated powers were those powers given to the central government by the constitution, but prohibited to the state. Those delegated powers included the regulation of foreign and interstate commerce; coining of money; passing of laws; providing for the common defense; conducting foreign affairs, declaring war and peace.[1] The implied powers allowed the federal government to do anything "necessary and proper" for carrying out the delegated powers.[2]

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[1]Cooperman, p. 137.

[2]Cooperman, p. 160.

The states were given the reserved powers by the constitution. These powers included those not granted to the cenral government nor prohibited to the states. The reserved powers of the state include providing for local governments; ratifying constitutional amendments; making laws pertaining to wills, contracts, and domestic relations; regulating commerce within the states; providing for and supervising schools; and caring for the handicapped, crippled, mentally ill, and utilizing its police powers.[1]

The state and national governments are constitutionally given concurrent powers defined as those not specifically given to either branch of the government to be used by both.[2] The forbidden powers are more rights than powers. They include the first ten amendments, the writs of habeus corpus, protection against the implementation of Ex Post Facto Laws and Bills of Attainders.[3] The compromise by the delegates to use a federal system to divide the powers equally between both branches was considered the perfect response to the proponents of state rights and the need for a strong central government.

Since the constitution of 1787 is called a constitution

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[1]Walter Selton, America at War at Home and Abroad, (New York: Basic Books Inc., 1971), p. 209.

[2]Selton, p. 215.

[3]Selton, p. 224.

of compromises, one should look at other historic compromises appearing during the writing of the constitution. The great compromise was no doubt one of the most productive compromises because it settled the dispute between the large and small states.[1] The provisions of the Great Compromise limited each state to two delegates in the Senate and the representation would be based on population in the House.[2] The Great Compromise was a union of the New Jersey and Virginia resolutions. In the Great Compromise, the House and Senate was given the power to propose laws, but no measure could become law without being approved in both Houses.[3]

After reaching this agreement, the convention encountered the problem of taxation. Most of the delegates expected the Congress to obtain its money through taxation, but they were confused by the procedures that would be used by the individual states. The majority of the delegates agreed that taxation should be assessed by the size of the state.[4] In raising money by direct taxation the North was quite willing to have slaves counted as part of the population,

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[1]Charles Manley, Government of Compromise, (Seattle: Stock & Co.,1971)

[2]Manley, p. 24.

[3]Manley, p. 32.

[4]Manley, p. 39.

but the South preferred not to count them. In the end, the delegates developed what they called the 3/5 Compromise counting all the free persons, 3/5 of the slave population for taxation and representation.[1] The Compromise resulted in a victory for the South because the Congress never taxed the states on the basis of population.[2]

The last compromise between the states was the commercial compromise between the North and South. Goods produced in the South were sent to foreign countries, and they did not want the Congress to tax the exports.[3] The South also feared the Congress would abolish slave trade. In the commercial compromise, the delegates finally agreed to empower Congress to regulate interstate and foreign commerce, but not to tax imports nor to interfere with the slave trade until 1808.[4]

In reference to the many compromises and modifications of the Constitution, Benjamin Franklin remarked:

> "I confess that there are parts of the Constitution which I do not at the present time approve of, but I am not sure I shall ever approve them . . . I doubt too, that any other convention we can obtain may be able to make a better constitution."[5]

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[1]Cooperman, p. 234.

[2]Cooperman, p. 239.

[3]David Spellman, The Right To Be Free (New Brunswick: Rutgers University Press, 1959). p. 487.

[4]Spellman, p. 490.

[5]Spellman, p. 499.

The conventional delegates declared when nine states ratified the constitution it would go into effect. The ratification of the constitution went through debates, arguments, and public meetings before it was ratified.[1] There were many who opposed the new plan.

The new constitution was no doubt a result of commercial interests. This was evident by the interest groups meeting at the constitutional convention. There were bankers, large land owners, political elites, lawyers, manufacturers, representatives from the shipping industry, agricultural interests and delegates representing every commercial activity within the society.[2] The composition of the constitutional convention consisted of men of great prestige and real assets. They met in Philadelphia to create a document capable of catering to the commercial interests of their states. The most essential function of the new constitution was not the protection of civil liberties. It was evolved to protect the propertied interests of each state.

The Bill of Rights were not implemented into the constitution until 1791. This was four years after the drafting of the new constitution. It was evident that

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[1]Spellman, p. 499.

[2]Allen Scott, Liberty or Death, (New York: Viking Press, 1967), p. 23.

the framers of the Constitution did not intend to create an egalitarian society. They were elites concerned with protecting their commerical interests. The debates in the state conventions were so lengthy and controversial because each commercial interest group wanted to be sure their economic interests had not been overlooked. The first debate for constitutional ratification within each state reflected intense conflict and many compromises.

During the writing of the Constitution, Article IX referred to as the commercial clause authorized the Congress to enter into treaties with other nations.[1] The Articles of Confederation had no original and inherent power over the commercial activities of the state at home or abroad. Under the provisions of Article IX, the moment the treaties are concluded, the jurisdiction of the Congress over the commercial activities of the states spring into existence.[2] Congress could regulate the commercial affairs of the state through a treaty with the other nation-state.

The commercial clause was found in the new Constitution because the respective states disregarded their legal obligations and interfered with foreign commerce in spite of treaty agreements. The Articles of Confederation had

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[1] Scott, p. 27.

[2] Scott, p. 37.

no provisions or remedies for the breaching of treaties.

It is essential to stress the point that the commercial clause of the Constitution did not resolve the problem of the breaching of international trade agreements, elitism, or pluralism. The competing economic interests groups called factions in Madison's day remained influential forces in commercial activities.[1] The various factions utilized Congressmen, lobbyists, and the political structure itself to protect their commercial interests. The Congressmen were accountable to the competing factions and not the general public. The commerical clause did not present a solution eliminating the bond between the Congress and competing factions. These competing factions utilized their economic support to the Congressmen to produce legislative accountability to commercial activities.

In the Federalist Paper 10, Madison analyzes the role of these competing factions in government. Madison's competing factions are presently called pressure groups. He had the task of assuring each competing faction that the new Constitution would defend their commercial interests. Madison said, "the most common and durable source of factions has been the various and unequal distribution of property."[2] The regulation of these interests forms the principal task of modern legislation and involves the spirit of

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[1]Scott, p. 51.

[2]Scott, p. 65.

party and faction in the necessary and ordinary operations of government. The new constitutional order had the responsibility of serving as a mediator between the competing commercial groups. Madison's article attempts to provide a solution for governmental regulation of pluralism.

Madison defended the Constitution in Federalist 37 by advocating a government with stability.[1] He said a stable government is essential in protecting the states against internal and external dangers. Madison stated that the people of the state of New York would not be satisfied until some remedy was applied to protect the state from the many uncertainties found in the Articles of Confederation.[2] The duration of governments would depend on the electors from each state who have been selected to protect the desires of their state and to relay its demands to the central government.[3] Therefore, the convention had to divide the powers of the central government with the state government. The article in the Federalist paper was designed to convince the citizens that the electors representing the states would defend

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[1]Manley, p. 203.

[2]Michael Harrold, Democracy at Its Best, (New York: Random House, 1971), p. 542.

[3]Harold, p. 545.

their basic rights and needs.

The Constitution was needed as a legal language expressing the ideas of the people.[1] The Constitution was drafted as a written document obligated to promote the general will. Madison's discourse in this article was designed to increase support for the Constitution by portraying the document as a vanguard of individual rights. Madison, and the rest of the convention utilized the drafted proposed constitution as a vehicle of ideas.

The Article in the Federalist papers by James Madison served the purpose of briefing the citizens of New York of the new Constitution. He compares the new central government with an army general responsible for conducting the affairs of the state. This central government is regulated by the new constitution. It is also provided with a set of guidelines listing the powers of the government on the national and state level.[2] Madison does a decent job of presenting the constitution as a loyal friend of the state always present to meet the responsibilitie

The events occuring during the writing of the Federalist papers typify an era of both conflict and cooperation . The writings of men such as John Jay, John Madison, Thomas Jefferson, and Alexander Hamilton illustrate a desperate attempt to persuade the states to accept the

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[1]Harold, p. 551.

[2]Harold, p. 579.

drafting of a new constitution. Hamilton wrote to gain the approval of the people in New York for the new constitution. He considered the new constitution a firm union of states uniting as a barrier against domestic faction and insurrection. The new constitution would distribute power into distinct departments with the introduction of legislative balances and checks between the branches of government and also the representation of the people in the legislature by deputies.[1]

Hamilton wrote in the Federalist papers that states such as Virginia, Massachusetts, Pennsylvania, North Carolina, and Georgia confronted the task of choosing between a monarchy and a unit of states combined to protect the commonwealth of each state regardless of whether that state was large or small.[2] Hamilton believed the country could operate more effectively with each state united to collectively share the obligation of the nation's domestic, political, international,and economical problems. Hamilton had the task of convincing the state of New York that the federal government could protect their interests best.

Hamilton's work in the Federalist papers was designed to persuade the citizens of New York to accept the idea of a federal system dividing the responsibilities of government between both the state and federal governments. With such a compact between the two governments, the

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[1]Cooperman, p. 409.

[2]Cooperman, p. 416.

federal government would permit and direct interstate contracts, revenue sharing, grant-in-aids, contractual agreements and corporate negotiations.[1] Hamilton's work illustrates an effective effort to convince the people of New York that the new constitution would provide for the economic desires of the state.

Madison did not stop with these articles, but also wrote articles 39 and 45 in the Federalist papers because the state of New York was the hardest state to convince. New York was considered the model that all the other larger states followed during crucial situations. Madison went all out to persuade the citizens to adopt the new constitution.

In Article 39, Madison introduces the term republican form of government. A republican form of government was defined by Madison as a government with the union constructed from a consolidation of states. The republican form of government would be evolved with responsiveness to the wishes of the state. The government would express the duties the people owed to their government and it would give the states the collective right to correct defects in the central government. This republican form of government would include all the items the states listed as grievances in the Articles of Confederation. The states

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[1]Cooperman, p. 427.

would have the right to determine the direction of government. The idea of the republican form of government would not be forced on the people. The concept of the republican form of government can be considered a part of the campaign to protect the needs of the states right advocates.

One should remember the point that a Federal act introduces the idea of a partnership between the two governments.[1] Madison wanted the citizens to know the national government implemented in the constitution by the convention could not operate without the consent of the state. The transactions implemented by the national or central government had to first be acceptable to the people before it could become a legitimized code in society. It had to operate by majority rule because this would permit the stronger forces in the society to bind the weaker ones. A federal system was the most effective tool the convention could create to protect such a relationship between the majority and minority.

The representatives of the House and Senate would be determined by the electoral processes of their respective states. The state would have tremendous influence over the senators through the state legislatures. The state

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[1]David Reisman, Abundant for What? (Chicago: Mallington Press, 1967). p. 7.

legislature selected the senators before the 17th Amendment was passed.[1] This amendment permitted the Senators to be elected by direct vote.

Madison took the position that a national government would have made these agencies subordinate to it, while a federal system permitted the agencies to be supreme. The constitution also allowed states to supervise its internal affairs without the fear of abolition. With a federal government, each alteration made by the national government had to come with concurrence from both levels of government.[2]

Madison was asking the state of New York to accept a proposed constitution that created a government partly federal and national. The federal government under a federal system collectively worked with the state to produce the needs of the individuals of the states. The national government would take supreme authority within the constitution over all people and things, since they are objects of a lawful government.

In the Federalist papers, Number 45, Madison explains the role of the national government in the federal system. The national government not only encountered the task of protecting the union against foreign powers, but it was also an essential weapon against wars occuring between the states.[3]

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[1]Reisman, p. 13.

[2]Reisman, p. 19.

[3]Reisman, p. 36.

Madison considered public happiness the most important consideration of the constitutional convention. Madison says, "if the public happiness would not be secured, my voice would also reject the plan. If the happiness of the people was being sacrificed to adopt the Constitution and the good citizens of the state were endangered, we would have immediately dissolved our plan."[1]

The state governments will have the advantage over the federal government, whether we compare them according to the weight of personal influence each state will possess; the powers vested in each; to the predilections and probably support of the people or to the disposition and faculty of resisting and frustrating the measure of each other.[2] In listing some of the dimensions where the state government has the upper hand on the national government, Madison points out that (1) without the intervention of the state legislature, presidents cannot be elected at all; (2) all appointments by the presidents must be confirmed by the legislature; (3) in many cases the president will ask the Congress to submit names for various appointed offices, this permits the legislative branch to capture an influential position in determining the nominees; (4) each branch of governments owes its existence to the states and (5) the

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[1]Cooperman, p. 436.

[2]Cooperman, p. 459.

members of the legislative, executive, and judicial branch, the justices of the peace, officers of the militia, ministerial officers of justice, with all the country corporations will exceed over three million people intermixed having influence and acquaintance with every social class.[1]

The states would also possess a great deal of impact in the area of taxation and appropriation since the Congress will control the purse. All the bills concerning finance will originate in the House. If the federal government is to have collectors of revenue so will the state.

The powers delegated to the federal government are few and defined, while those retained by the state are more numerous, and indefinite. The national government controlled national defense, war, maintenance of peace, and foreign commerce and negotiations. The state controlled the ordinary course of affairs; all matters concerning the lives, liberties, and properties of the people, internal order, and prosperity of the state. The powers of the national government were more extensive during war and national defense. Therefore, this constitution will work because the state will still be allowed to control taxes and commerce within the internal affairs of each individual state. The states would also have a voice

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[1]Cooperman, p. 473.

in foreign commerce through their elected representatives.

The Articles by Madison and Hamilton in the Federal papers presented a clear attempt to persuade the larger states that the national or central government would not jeopardize their commercial interests. The new constitution was feared by the states simply because the supporters of states rights considered the new national government as a violator of state autonomy. The states wanted to prevent national intervention into the internal affairs of the states. The "Federalist Papers" became an instrumental weapon for demonstrating the political and economical independence possessed by the states in the new constitution.

CHAPTER III

THE CORPORATE WORLD AND GOVERNMENT PARTNNERSHIP

The Corporation has been defined as a human invention serving human needs.[1] This definition is very essential in ascertaining and understanding between the corporation and the Constitution created in 1787. In theory, the corporation is said to be subservient to the state that creates it and the market in which it competes.[2] If it does not meet its social obligations, the state can amend it or revoke it.[3]

The previous theoretical assumptions made by Ernest V. Nadel in his book Corporations and Political Accountability are very important in determining: (1) whether the corporation considers its social obligations within the society primary; (2) whether the corporation accepts the idea that human rights are essential goals and (3) whether Beard's

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[1]Ernest V. Nadel, Corporations and Political Accountability (New York: Random House, 1974), p. 10.

[2]Nadel, p. 12.

[3]Richard Barnett, Global Reach (New York: Schuster and Company, 1972), p. 19.

thesis that the constitutional order and the state is the promoter of commercial interests and profits at all expense is accurate. This chapter examines the thesis and evaluates the role of the Constitution in limiting the economic activity of the gial corporation. It is the unrestrained economic actions allowing the corporation to bypass its social obligations. The constitutional order and the state have developed a partnership with the corporation without any agency regulating its political social, or economic accountability.

The failure to create effective regulatory restraints on the corporation has led to the evolution of giant corporations surpassing the rules and regulations of the state.[1] These few giant corporations have become larger in economic size and power than the states that chartered them. The last thirty years, the largest 200 corporations have increased their manufacturing assets from 50 percent to 60 percent.[2] It is clear that the political, social, and economic significance of these multi-national, multi-billion dollar, and multi-industry giants is increasing. They are extremely immense and powerful.

The political, legal, and economic muscle of the giant corporations has paved the way to a globalization of commercial activities by corporations throughout the

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[1]Bruce Findley, Who Really Runs America? (Englewood Cliffs, New Jersey: Hiller and Company, 1973), p. 23.

[2]Findley, p. 123.

world.[1] The giant corporation has extended the spread of commercialism that began in 1787 and created an elite society. The elites of the corporate world have utilized corporate power to decide what new jobs will be available; which ones will terminate; and whether they will be located in New York, Hong Kong, San Francisco, or London? The power of the corporate world over commercialism and industrialization has permitted the giant corporations to make decisions for people rather than with them. The constitutional order given the responsibility to protect the liberties of the people has been powerless against the overwhelming political and legal muscle used by the corporation to attain their goals. The corporation is not in business to set humanistic standards but instead for profits. They have utilized their abundant profits to maximize power.

Over 1,000 corporations known as multi-nationals control nearly 3/4 of the world's productions and sales. Multi-nationals are wealthy industries possessing productions, sales, markets, and industrial or infant plants abroad.[2] They are in a position to refuse the effects of collective bargaining, undermine strikes, reduce living standards and threaten freedom by the fact that they no

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[1]Findley, p. 137.

[2]William Rodgers, Corporate Country (Detroit: Rodole Press, 1974). p. 23.

longer belong to any country. These are economic dilemmas confronting underprivileged people and the due process and general welfare clauses are virtually powerless in restraining the dilemmas created by the multi-nationals. The Constitution supports this behavior and bypasses the civil liberties of the underprivileged to give the corporations legal support in their exploiting explorations.[1]

The economic concentration of global firms have extended beyond frontiers and national boundaries. It has been said that the multi-nationals are fifty years ahead of the responses of government.[2] In many areas, governments can no longer hope to contain the problems created by this structure. The constitutional democracy created in 1787 does not place any restrictions on the social, political, or economic ills of the American Corporations on the domestic scene.

The abundant economic concentration by the giant corporations and its control over the destiny of every citizen places the utility of the Constitution in question. The motives of the founding fathers in placing the Bill of Rights after the originial draft of the Constitution tend

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[1]Barnett, p. 107.

[2]Barnett, p. 123.

to be very deceptive. The question Charles Bears was posing seems to be, did the founding fathers create the Constitution as a judicial document with economic undergirdings leading to corporate growth, elitism, and inequity caused by commercial expansion.

Socialism for the Rich

This section examines the relationship of the corporate bodies with the Federal government. It has been entitled socialism for the rich because the government always manages to maintain a welfare system or public assistance program to aid corporations encountering economic dilemmas.

Then the government consistently provides economic assistance to the rich and excludes the poor, this type of socialism only benefits the wealthy. When one thinks of the concept of socialism, he immediately associates it with governmental programs directed toward aiding the underprivileged. These programs include food stamps, free lunch, housing projects, unemployment reliefs, disability checks, and welfare checks for the disadvantaged families.[1] These are only a few of the public welfare programs used during the monetary crisis. The irony of the concept of socialism is the fact the government has provided the greatest economic assistance to corporate giants.

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[1]Rodgers, p. 94.

The underprivileged people remain inpoverished, discriminated against, and confronted with inadequate houses and medical facilities. The low waged segments of the working class considers the acceptance of public assistance lower than the pay he is receiving at his regular job and his incentive to work forces him to despise the idea of welfare from the federal government.

The public welfare plans were evolved to assist the old, the senile and the handicapped. It was not designed to provide assistance to the healthy individual with no physical handicap preventing them from working. This is why the federal government attempted to make a distinction between poor houses and poor work house. Historically, the poor houses were created to provide relief for those with physical handicaps restricting them from employment. The poor work houses were governmental programs providing jobs for the unemployed. The government's federal assistance programs includes the handicapped and excludes those it describes as people without the incentive to work.

The multi-nationals captured the resources and labor of the poor in the United States and developed international capitalist networks exploiting labor everywhere on the international scale. Despite the exploitation

of the labor, the government continues to support the aspirations of the corporations. The government does not intervene when the corporate world robs the national and international underprivileged groups to increase their wealth.[1] The government always comes to the rescue of the corporate world at the slightest corporate ill-health; even if it is brought on by the corporation's own indulgent living.[2] Anti-Trust laws like the Sherman and Clayton Anti-Trust Acts have decorated the law books since their passage in 1890.[3] There is little in the records of the law books to suggest that anti-trust have placed restraints on American monopolies; rather it seems like a fig leaf modestly concealing the harsh facts of consumer exploitation.[4]

In the last forty years in America, seventeen anti-trust acts have been brought against General Motors.[5] The company has lost all but three of them, but none of the cases lessened the corporation's grip on the automobile market, and the largest fine it has had to pay was $56,000,

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[1]L. H. Wienstein, Corporate Consciousness, (Columbia: South Carolina, Columbia University Press), 1965, p. 311.

[2]Wienstein, p. 317.

[3]Wienstein, p. 321.

[4]Barnett, p. 330.

[5]Raymond Skidmore, America, Inc., (New York: Random House, 1971), p. 407.

less than 10% of their chairman Richard Gerstenberg's 1973 salary of $923,000.[1] In all fairness to the members of the anti-trust divisions of the justice department, it should probably be said that there is something incongruous in the idea that they could contain a firm with the power of General Motors. This can be compared with Finland trying to attack the Soviet Union.[2]

The case of Lockheed should also be examined since Lockheed has been favored with the opportunity to make abundant profits with governmental assistance. Most of Lockheeds troubles have grown out of its contract for the C5A transport plane.[3] 1969 was the last year in which the Congress authorized the military to buy planes under the C5A contract. Despite the actions of the Congress opposing the military purchasing of planes, each year since the Congress has voted hundreds of millions of dollars for cost overruns.[4] Congress and the Nixon adminstration had perceived the fundamental truth that they no longer needed the C5A, while all involved needed the cost overruns to avoid the alternative of work or welfare.[5] The Lockheed case is a clear indication

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[1]Skidmore, p. 407.

[2]Skidmore, p. 443.

[3]Skidmore, p. 467.

[4]Barnett, p. 423.

[5]Harry Madolf, The Age of Imperialism, (Detroit: Hopkins Press, 1967), p. 245.

of the socialist programs government provides for the rich.

The principle involved in the Lockheed case was stated succinctly by Major General "Zeke" Loeckler, program chief at the Pentagon. The Fighter Bomber created by general dynamics totaled a cost overrun of 500%.[1] Responding to critics, the General said, "attaining social goals involves waste."[2] The government never comes to the assistance of the average man when he is confronted with cost overruns and his purchasing power is steadily decreasing. The Pentagon forces the smaller defense contractors to live up to their contracts. The smaller defense contractors do not qualify for the socialism bestowed upon the rich by the federal government.

Litton Industries is a relative newcomer in the field of defense, but has been coming on fast. In recent years, it has scored cost overruns on two big shipbuilding contracts. American monopoly socialism moved in once again with funds to meet the cost of the overruns. In 1972, Litton moved 5th on the list of leading profit-makers within the shipbuilding industry.[3]

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[1]Madoff, p. 250.

[2]Madoff, p. 257.

[3]Madoff, p. 265.

After the Nixon re-election in 1972, Litton Industries contributed to the Nixon campaign. The Litton Company and Roy Ash was rewarded dearly for their services to the Nixon Re-election when Roy Ash of Litton was appointed Director to the Office of Management and Budget.[1] As director of OMB, Ash was given the authority to decide which defense plants would be given federal assistance to meet the problems of cost overruns. Ash had the authority to extend the principles of monopoly socialism to other military pioneers. The close liaison between industry and government is always concealed even though it is evident in reality. The government does not boast of its liaison with monopoly corporations because it does not want the public to catch the connection. Whenever the economy is sickly, we are told controls would be bad because they would interfere with the workings of the Free Market. The so-called Free Market distracts us from the fact that the government is assisting capitalist exploitation. The consumer is also distracted by the symbolic uses of politics in the creation of anti-trust laws and regulatory agencies to prevent the exploitation of labors and consumers by big corporations.[2] Both the anti-trust laws and regulatory agencies have

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[1] Barnett, p. 309.

[2] Barnett, p. 317.

been dysfunctional monopoly violators.

The power and monopoly socialism bestowed upon the rich by the constitutional order is demonstrated again in the case of ITT. The International Telephone and Telegraph Company is of course the world-wide multi-glomerate that received its' greatest advance in consumer recognition with a publication in 1972.[1] The publication consisted of a memo by ITT's Rita Beard discussing a 400 million dollar offer to the Republican Convention if the Justice Department dropped its objection of ITT's annexation of the Hartford Insurance Company.[2] This acquisition had brought ITT two billion dollars in profit. The publicity produced by the deal did not prevent ITT from annexing more companies at home and abroad after the Hartford episode. ITT makes most of its money through its government connections and the skills it has acquired over the years has enabled the company to survive adversity unruffled.[3] During World War II, the company worked for both sides, one ITT firm made the Focke-Wulf fighter plane for Nazi Germany, while another made electronic equipment

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[1]Roger Orfield, The History of American Corporations (New York: Random House, 1969) p. 271.

[2]Orfield, p. 294.

[3]Orfield, p. 297.

for the United States Air Force.[1] After the War, in a remarkably bold stroke of lobbying, ITT actually got the United States Foreign Claims Settlement to give it 27 million dollars for the damage American bombers had done to its German war plants.[2]

It would be unfair to close the discussion on the corporate world and governmental partnerships without effectively showing the bond that ties the two together. There is a need for a clear understanding of the reasons why large corporations like Lockheed, Loekler, and General Dynamics have not been accountable for their actions. The lack of accountability is a very significant factor in the ineffectiveness of both the state and the American constitutional order in regulating corporate behavior.

The corporation has been a hegemonic power in the society linked with public policies, to control inflations, pollution, the food we eat; the drugs we take and public transportation.[3] The giant corporations have been accused of using its effective lobbying power to kill policies designed to increase funds for public transportation or replace brand name drugs with generic names.[4] The auto-

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[1]Orfield, p. 413.

[2]Frank Morgan, The Social Impact of Global Corporations (New York: Simon & Schuster, 1968). p. 33.

[3]Morgan, p. 39.

[4]Barnett, p. 309.

mobile industry and drug industry supported legislation for private cars and brand name drugs.

The Watergate period really brought the corruption of the giant corporation to light. ITT admitted trying to undermine the former goverments of Chile and making illegal campaign contributions to the Nixon Re-election Funds.[1] Gulf Oil, Ashland Oil, Northrup Corporation, Lockheed, and Shell admitted making payoffs to foreign politicians.[2] The nature of the beast called the corporation was to earn the greatest amount of revenue sales and profit returns at the cost of all social obligations.[3]

Corporate influence or power in government begins with corporate influence in determining who gets into government or elected.[3] The primary means of attaining this goal is using campaign contributions as an instrument for electoral influence. In 1970, 11 out of the 35 senatorial races reported expenditures of more than $150,000.[4] It was the large corporations leading the list of campaign contributors. At least half of Hubert Humphrey's 1968 general election revenues were accounted

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[1]Barnett, p. 313.

[2]Morgan, p. 70.

[3]Morgan, p. 75.

[4]Morgan, p. 78.

for by contributions from fifty of the long established dynasties.[1] Since the need of money by people running for office is paramount, campaign contributions allows the giant corporation to control as much of the political environment as possible.

Violations of campaign laws on contributions reached an alarming level during the 1972 election campaign and in the wake of the Watergate scandal. American Airlines was also included in the list of violaters. George A. Spater, former board chairman of the American Airline, admitted the company had contributed $55,000 out of the corporate funds to the Finance Committee to re-elect the President in 1972.[2] The funds were issued through a false invoice for the payment of a commission to a Lebanese firm called Amarco, for the sale of used aircraft.[3] $100,000 was laundered through an Amarco Bank account in Switzerland and transmitted to Chase Manhattan Bank in New York.[4] When the Lebanese agent transmitted the cash to officials of American Airlines, payments totaling

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[1] Morgan, p. 89.

[2] Barnett, p. 370.

[3] Findley, p. 401

[4] Findley, p. 409.

$55,000 were made to the Nixon Re-election Committee with the remaining going to the Airline.[1]

By 1976, more than a dozen corporations had pleaded guilty to illegal, contributions to the Nixon re-election Committee.[2] This included $100,000 from Phillips Petroleum $30,000 from Minnesota Mining, $100,000 from Gulf Oil, $40,000 from Goodyear Tire and Rubber, $100,000 from Ashland Oil and $40,000 from Braniff Airways.[3] The Associated Milk Producers Inc. have been convicted for a variety of illegal contributions to the Hubert Humphrey campaign.[4] Corporations have successfully utilized campaign contributions to make the law-makers and enforcers accountable to them. The representatives of the American people who make the law and enforce it have become accountable to the large corporation. The Constitution is interpreted in a manner beneficial to the corporate giants.

When the dairy producers realized they had to

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[1]C. K. Wilber, The Political Economy of Development, Chicago: Alfred A. Knopf, Inc. 1971), p. 27.

[2]Wilber, p. 55.

[3]Wilber, p. 116.

[4]Wilber, p. 125.

compete in hard currency with the economic contributions coming from the oil companies, labor, steel, and airline industries. The Dairy Association accepted the fact that large payments to political officials creates an environment for political favors. The producers saw the need to form a dominant group among themselves to attain economic and political concessions. On March 23, 1971, ten dairy farmers assisted by William A. Power, the president of the Dairymen's Incorporated, sat in the cabinet room with the President.[1] The President complimented them for consolidating in the involvement of politics and thanked them for their economic support to his re-election. Two days later, an order came from the President of the U.S. Agriculture Department increasing the support price of milk to 85 percent and added from 500 to 700 million dollars to the dairy farmers milk checks.[2] In 1974, the federal court found the Milk Producers Incorporated guilty of Election Law Violations and fined them $35,000.[3]

The abundant campaign contributions to the electoral process creates a situation where the large corporations do not have to wait too long to get their goals accomplished

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[1]Morgan, p. 130.

[2]J. W. Bhawati, Economics and World Order From 1970-1990 (New York: Martin Press, 1972), p. 34.

[3]Wilber, p. 181.

by the congressmen. Lobbying becomes an essential instrument for seeking special favors from the legislators in Congress. Corporate interests enjoys superior formal access to policy makers.[1] The congressmen know the importance and the expectations of their friendly ties with economic and industrial elites. While the corporations have used their contributions and lobbying power to make the legislators accountable to them, there are no lobbyists for the hidden people called the grass-rooters.

The corporation not only exerts its influence on government through the funding of elections and lobbying but also through its control over the actions of regulatory agencies. These agencies were created to force the corporation to abide by the monopoly laws, laws against illegal competition in pricing, and control of the markets. Some of the regulatory agencies created to regulate corporate behavior were the Interstate Commerce Commission, Federal Communication Commission, Securities and Exchange Commission, Federal Trade Commission Better Business Bureau, Food and Drug Administration and the Civic Aeronautics Commission.

The responsibilities and duties of these regulatory agencies were to make the corporations accountable

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[1] Bhawati, p. 50.

to the law and the public. Federal Trade Commission had the responsibility of forcing the corporations to abide by the anti-trust acts and not resort to illegal monopoly practices. The Federal Communications Commission had the responsibility of providing both radio and television licenses.[1] The Interstate Commerce Commission regulated the cost and price of freight transported by rail, ships or trucks.[2] The Civic Aeronautics Commission regulated airline prices, transportation of goods and corporation behavior.[3]

The giant corporations have used legal advocacy, economic muscle, and conspiracies to capture the regulatory agencies and become dominant over them.[4] Representatives of the corporations involved are present at all stages of decision-making conducted by the regulatory agencies. The most persuasive form of industry over regulatory agencies had been direct communication and pressure.[5] The regulatory agencies have become mere tools of the giant cor-

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[1]Bhawati, p. 50.

[2]Bhawati, p. 54.

[3]Bhawati, p. 58.

[4]Bhawati, p. 67.

[5]Daniel Osterberg and F. Ajami,"The MNC in World Politics,"Foreign Affairs, Vol. X, Summer 1975, No. 2.

porations and not the servants of public interests. The corporation effectively utilizes their economic, political, and legal muscle to intervene in the regulatory decisions to benefit themselves. Murray Eldeman's Symbolic Uses of Politics, describes the regulatory agencies as a powerless agency limited by the superior economic resources of the giant corporations.[1] The symbol of the regulatory agency as a defender of the public interests represents a deceptive myth concealing the influential role of the corporation in regulatory decisions.

The partnership between corporations and government exist because the corporation is a private government not accountable to the public, government or regulatory agencies. Corporate control over natural resources, capital planning, research development, and technology makes the corporation the hegemonic leader of the economic environment. Economic concentration of the society in assets and economic activity lie in the hands of the corporation.[2] The top 200 corporations in the country hold 60% of the manufacturing assets in the country in 1972 increasing from 47.7% in 1950.[3] When

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[1]Osterberg, p. 10.

[2]Osterberg, p. 13.

[3]Osterberg, p. 19.

the resources are transferred within the society, it is not transferred to the public but instead transferred back to the corporation. The corporation is not accountable to the politician, state, regulatory agencies or constitutional restrictions. It is the most dominant and influential force in the society.

The International Implications of Multi-Nationals

These American firms dominating the world market includes Gulf Oil, Standard, General Motors, ITT, ATT, Shell, Mobil Oil, Continental, Lockheed, and many others. These monopoly capitalist firms have increased their dominance over the world market due to a lack of constitutional restrictions. The organizations have created subsidiaries and head offices in the Third-World countries of Latin America, the Middle East, Africa and Asia. The success of the multi-nationals in controlling the internal markets of the Third-World countries and its labor force has permitted the American firms to influence the social and political structures of the underdeveloped countries. The multi-nationals have used their superior capital to control the markets, labor, production, pricing, and transportation of goods on foreign soil. The foreign constitutional orders have been unsuccessful in gaining a greater control over their

resources. The foreign businessmen, markets, and firms find themselves accountable to the global firms of the United States. These global firms used its superior capital to regulate their behavior.

An example of the international exploitation by American companies was demonstrated in the developments with the International Petroleum Corporation's holdings in Peru. The industry in Peru was a subsidiary of Standard Oil of New Jersey and it was in the process of being nationalized by the Peruvian governments. Their claim was that the International Petroleum corporation owed the government $700,000 in back taxes.[1] Rockerfeller had refused to pay the corporate taxes to the Peruvian government. The national government of Peru was powerless in forcing Rockerfeller to pay the back taxes simply becuase of their dependency on Standard Oil for profit returns from international trade.

Another example of corporate dominance throughout the globe was the Mellons of Gulf Oil in Pittsburgh who negotiated with the Portuguese for the right to drill oil in Mozambique and Angola.[2] Although the Liberation

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[1]Daniel Murray, U. S. Corporates Across the Frontiers, (Miami: Gunning & Co., 1971), pl 341.

[2]Murray, p. 360.

Movements of the respective countries expected Gulf Oil to confront them for drilling rights, Portugal spoke in behalf of both Angola and Mozambique. Gulf Oil avoided developing a negotiation settlement with the Liberation Movements were said to be anti-capitalist and considered the illegitimate goverment of Angola and Mozambique.

The point that needs to be made is that the entrance of the Gulf Oil Corporation in these areas led to the depletion of their oil resources and profits. It has also allowed the Mellons of Gulf Oil to create subsidiaries in both Angola and Mozambique. The economic ventures in Africa allows the large corporations to utilize its superior capital, managerial skills and technology to include the African countries in the world capitalist market.[1] The unequal exchange in commodities, production, profit returns and distribution has brought Angola and Mozambique into the category of economically backward societies.

The expansion of General Motors and Ford in South Africa provides another illustration of the impoverishment of the average man on the international scale by American firms unrestricted by the Constitution or the political structures that interpret it.[2] The

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[1]Murray, p. 363.

[2]Murray, p. 363.

expansion of production and production facilities by Ford and General Motors into South Africa led to the underwriting and subsidizing of African regimes. These corporations in South Africa provided loans for military equipment and economic modernization. The military loans were utilized in South Africa to suppress revolutionary liberation movements determined to give the government back to a black majority. While South Africa suffers from internal conflicts, companies like General Motors and Ford utilize the African countries for profits and cheap labor.

Historically the American oil companies have built subsidiaries in South America, Africa, and the Middle East. It was the United States who furnished 70% of the world's demand for oil by 1929.[1] The American firms entered in Iraq in 1927 and made important discoveries in Saudi Arabia and Kuwait between 1936 and 1939.[2] This production of oil was abundant enough to supply the nation's energy needs. Since the United States government and oil interests accepted the fact that oil was an exhaustive mineral, the firms wanted to increase its oil reserves to be in a position to cater the oil requirements

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[1]Murray, p. 381.

[2]Ernest Nodel, Corporations and Political Accountability, (New York: Random House, 1974) p. 13.

of the world. The depletion of oil in the foreign soils of the Middle East served as a profitable venture for American firms striving to increase its profits. Saudi Arabia became America's number one supplier of oil.

The American dependency and exploitation of the oil in the Middle East was the solution to the possible oil shortage in the future. In 15 years, the American companies took more wealth out of the Middle East than the British took out of their entire empire during the whole of the 19th Century. The oil industry has supplied the fuel for the two World Wars, the Korean War, and the Viet Nam War.[1] Oil was a vital resource for the nation seeking super-power status on the international scale. The United States led the nations in the consumption of oil. Oil generated the power for steel, cement, metal, and glass industries at home and abroad.[2] It was the oil industry leading the American enterprises overseas in the formation of multi-national corporations overseas.[3]

Andrew Mellon of Gulf Oil and John D. Rockefeller of Standard Oil have been the old mainstays of a whole generation of rich and super rich men of the American society. Gulf Oil, the Rockefeller companies, Exxon and

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[1]Nadel, p.17.

[2]Nadel, p. 30.

[3]Nadel, p. 38.

Mobil were the richest oil companies. The top five companies were Standard, Gulf Oil, Exxon, Mobil and Texaco. These companies eventially created an international cartel with Anglo-Dutch Shell and British petroleum depleting Middle East oil resources for the booming markets of Japan and Europe.[1] The United States has used its nuclear power and influence over the Middle East oil reserve to form alliances with Germany and Japan.[2]

The United States provided the Middle East with military security in return for the depletion rights of the country's oil. The United States global corporations have also resorted to Latin American and Canadian oil resources to build its oil empire.[3]

Since the American firms have nearly depleted the oil supply of Canada and Latin America, the Middle East is the last alternative. The building of a huge air base to transport Saudi Arabia's oil with United States funds symbolized an effort to tighten the alliance with the oil producing countries.[4]

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[1]Nadel, pl 47.

[2]John Kilman, The Corporate Structure and the Political Process (Detroit: Weisman Inc. 1970) p. 371

[3]Kilman, p. 379.

[4]Kilman, p. 385.

Although countries like Indonesia, Nigeria, Libya, and China are said to be the next potential oil giants for international trade. They have not developed enough oil to meet the oil requirements on the world market.[1] American oil companies increased its influences over the sale of Saudi Arabia's oil by building an Arabian-American oil company.[2] The American oil industries contributed financially to the construction of the Arabian-American oil companies.

The United States oil companies Exxon and Mobil paid the finances for a 700 mile pipeline to transport oil across the desert to the Mediterranean.[3] The American companies used the pipeline to transport oil to the Western European market. The European Cooperation Administration (ECA) accepted and approved loans and grants from American companies permitting the companies to build refineries and subsidiaries in Europe.[4] Most of the profits coming from the refineries and subsidiaries in Europe went to the American companies. They possessed the controlling interests in the companies.

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[1]Kilman, p. 387.

[2]Nadel, p. 89.

[3]Nadel, p. 93.

[4]Charles Frankel, The Affluent Society, (Boston: Houghton Miffin Inc., 1970) p. 513.

American oil companies hold 40% of the French petroleum market.[1] Exxon, the largest corporation, makes 60% of its billion dollar profits from outside the United States.[2] Most of the American companies did not pay corporate taxes on revenues.[3] America also turned to Mexico and Venezuela as the chief sources of oil in the Western Hemisphere.[4]

These industries constitute powerful economic agents within our society that have migrated overseas to Africa, China and Saudi Arabia depleting the fertile soils of these countries to add to its own oil reserves.[5] There was a desperate need to extend and expand its monopoly over oil production,sale, pricing, consumption, markets and trade throughout the world.[6] The constitutional constraints in the country have been ineffective in eliminating the global monopoly of giant corporations over foreign markets. The global firms have utilized this type of illegal domestic monopoly to

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[1]Bernard Nossiter, Corporate Power and Court Regulation, (Cambridge, Mass.: Oxford Press, 1971) p. 50.

[2]Nossiter, p. 65.

[3]Frankel, p. 539.

[4]Nodel, p. 109.

[5]Nodel, p. 130.

[6]Martin Lielenthal, American Constitutional Law, (Ithaca: Cornell University Press, 1965) p. 640.

enter the foreign countries to expand their profits and extend exploitation abroad.

It is also essential to evaluate the domestic actions of Lockheed which is the country's number one defense contractor. Lockheed has made its name known at home and abroad. The corporation earned an abundant amount of profits for foreign soils. This industrial collossus is dependent upon the Pentagon for a whopping $2 billion dollars worth of business a year.[1] The corporate managers brought the company to such a state that government had to bail it out with a $200 million federal loan guarantee.[2] The corporation was charged with mismanagement and bribery of foreign officials. The Defense Contract Audit Agency (DCAA) discovered the corporation may have taken $83 million too much profit during the fiscal year 1972.[3] The DCAA documents also content that the firm charged Uncle Sam almost $2 million for questionalbe overhead costs.[4]

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[1]Lielenthal, p. 647.

[2]Lielenthal, p. 654.

[3]Lielenthal, p. 659.

[4]Robert E. Cushman, Cases in Constitutional Law (New York: Meredith Corporation, 1973), p. 680.

The DCAA served as a regulatory agency protecting the federal government from misuse and discrimination in the appropriation of federal funds to American defense plants. The agency also served as a symbolic victory for the regulatory agencies which have been organized to protect the small industries from monopoly created by the larger ones. Military weapons and defense are very important variables to nation-states seeking the status of a super power. Large defense companies like Lockheed produced the weapon systems used in military confrontations throughout the world. The use of Lockheed's funds to bribe foreign officials in Europe, Asia, Japan, and Latin America illustrates the intention of the American firm to become a preponderant force at home and abroad.

Despite government allegations against Lockheed, Shell, Standard, and General Motors, all of the corporations increased their profits through whatever means necessary. All the companies wanted to possess the economic strength to influence political decisions on the national and international scene. Contributions to political campaigns, bribes, and the construction of industrial plants in foreign countries permit the multi-national corporations to increase their profits in the world market and its exploitation of the inter-

national working class.[1]

The international implications of companies like Standard, Lockheed, Gulf, General Motors, Ford, Standard, Mobil and others in Latin America, Europe, and Asia illustrates the impact of these super rich corporations in the internal affairs of these countries. The American firms influence the legislative statutes of the country and advise its national leaders on issues vital to their interests. The corporations are most concerned with the tax laws or reforms, tariffs, trade agreements, and economic statutes implemented by the governments.

The monopoly capitalist brought this uneven development and inequality in Asia, Africa, and the Middle East, and Latin America. The international exploitation of underprivileged people became an unwritten law in the operations of a vertically integrated capitalist world market.[2]

There is a close relationship between the lack of constitutional constraints placed on American firms at home and abroad and the idea of a constitutional framework protecting the liberties of all. The preamble to the Constitution calls for the protection of the general welfare and the Bill of Rights encompasses the idea of due process or fairness to all. The increasing control

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[1]Cushman, p. 688.

[2]Cushman, p. 693.

of world production by the global corporations and the increasing of economic impoverishment says two important things about the American dream of constitutionalism. It is either a deceptive myth which never was intended to deliver due process to all. The general welfare and due process doctrines only refers to the members of the corporate families. This statement would imply that the Constitution is an elite doctrine, delivering goods and services to the owners of wealth.

The analysis of the Constitution as a document facilitating corporate expansion of commercial development becomes very important in the examination of the gap in the living conditions of the rich and poor. While the American corporations increase their sales, production, and profits, the living conditions of the poor remain the same. The domestic and international monopoly developed by the American corporations not only affects their commercial activities, they also are very influential in the behavior of labor. The working class has resorted to the strike, collective bargaining and work councils to improve corporate and labor relations.

The Court and Commercial Development

Since the court has been under attack for its failure to regulate corporate behavior, it is essential to analyze some of the court decisions affecting corporate actions. Historically, the courts have left the interpretation of the commerce clause and its enforcement in the hands of the Congress. The higher courts have taken a hand-off position in the decisions made by the Congress on interstate and intrastate commerce. The commerce clause finds its roots in Article IX of the Constitution where the Congress is given the exclusive powers to regulate interstate and foreign commerce because the states had violated the terms of their contracts with foreign nations.

In analyzing some of the cases authorizind Congress to regulate interstate commerce, Gibbons vs Ogden 1824 stated the Congress had the power to regulate commerce and to prescribe the rule by which commerce is governed.[1] While the manufacture of goods itself is not a part of interstate commerce, the prohibition of the shipment of these goods by Congress is definitely a regulation of the commerce clause.[2] Under Gibbons vs Ogden,

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[1]Cushman, p. 703.

[2]Cushman, p. 710.

the commerce clause extends not only to those regulations which did fosterand protect the commerce, but embraces those prohibiting it.[1]

Congress had the power to prohibit transportation in interstate commerce of noxious articles found in the case of Champion vs. Ames 1903; stolen articles found in Brooks vs United States 1925; kidnapped persons in the decisions of Gooch vs U. S.; and the traffic of convict made goods or intoxicating liquor forbidden or restricted by laws of the state of destination in Kentucky vs Collar Co. 1937.[2] The motive and purpose of the regulation of interstate commerce were matters of legislative judgement with no restriction by the courts or judiciary. The case of Venzie Bank vs. Fenno 1869 set the precedent for that decision. The courts have also left the decisions on strikes or unfair labor relations in the hands of regulatory agencies working hand in hand with the Congress.

In the case of the National Relations Board vs Jones and Steel Corporation 1937, it was the National Relations Board deciding the nature of the strike

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[1]Cushman, p. 710.

[2]Cushman, p. 712.

against Jones and Steel Corporation. The National Relations Board decided whether the strike was illegal and laborers had not been treated unfairly. Agencies like the National Relations Board and the Federal Trade Commissions were given the power and independence by the court to decide unfair labor treatment, Sherman and Clayton anti-trust violations and illegal competition procedures. These decisions represented symbolic tools hiding a close bond between the congress, court and corporation. It is the working class that is eventually left out.

Since the corporation has been accused of using tax loopholes to avoid the payment of corporate taxes, it is alse essential to analyze the actions of both the state and the courts on the regulation of taxes. In the case of Collector v. Day (1871) and Brush v. The Commissioner of Internal Revenue (1937), the operation of New York City's water works was held to be a government function. The chief engineer and Collector were immune from federal income taxiation. The Court pointed out in the Graves Case (1939), everything the federal government did stemmed from the powers delegated to it by the Constitution. Congress had the responsibility of protecting the corporation and the proprietor with whatever protections it sees fit. Congress was given

the authority by the courts to extend tax immunity to federal land banks in the case of Federal Land Bank vs Bismark in 1941. This decision was extended to the case of Carson vs. Roone-Anderson Company in 1952 where the court held that immunity from state sales could be extended to those doing contract work for the federal government in the field of atomic energy. The courts decided in Phillips Chemical Company vs. Dumas School District in 1960 that immunity from taxation is not lost on property which the United States exercises "exclusive legislative jurisdiction, even though it is leased to a private company." Furthermore, private property of an oil company located on such a federal enclave is not subject to state taxation. The Court rendered this decision in Humble Pipe Line Co. vs Waggoner, 1964.

Each of the cases on corporate behavior bestows upon the Congress and the federal government the right to tax and regulate the commercial affairs of the state. The courts permit the Congress to decide whether the activities are legitimate or illegitimate. When you consider the fact the Congress will determine whether monopoly laws are violated, corperate taxation evaded or illegal competition has occured, the question of accountability becomes a problem.

The Congress and state legislators represent the conflicting interest and pressure groups in the

society. The founding fathers left the Congress with the responsibility of regulating commercial activity because they realized the legislature would protect the interest of the commercial groups of the day. Nadel's thesis of corporation and political accountability is useful in describing the relationship of the corporation and Congressmen. The Congress gave the corporation tax immunity and favorable regulatory decisions because the corporation utilized its contributions to campaigns to influence their decisions. The corporation used its financial resources and lobbying power to make the regulatory agencies accountable to them. The state and Congress have become tools of the corporation subject to its superior financial resources. The Constitution becomes a supporter and ally of corporate domination and exploitation.

CHAPTER IV

SHORTCOMINGS OF AMERICAN JUSTICE

This chapter examines the role of the criminal justice system as a legal repressor using the court as a weapon or instrument to circumvent the rights of underprivileged people. This section of the work also examines the utility of the due process and fairness doctrines in protecting the liberties of minorities in an egalitarian society. The court has used its power of legal interpretation and definition to support the class interests of the owners of property and wealth.

In analyzing the role of the criminal justice system in preserving minority rights, one must remember the consitutional founders created the Bill of Rights as a protector of civil liberties. The due process clause or doctrine of fairness was expected to lead to a constitutional model providing the poor with the right to counsel, the right to fair and speedy trial and the right to be safeguarded against excessive bail. There is an essential need to examine these amendments to detect whether they are deceptive symbols or realistic

constitutional guidelines for securing the rights of the poor.

The criminal justice system has been organized under the premise that up to 90% of the defendants will plead guilty and that 85% to 90% of the victims committing the crimes will come from the minority group.[1] While the constitution requires a fair and speedy trial, 52% of the inmates in the 1970 federal census of the city and county jails were waiting either for arraignment or trial.[2] The majority of the defendants awaiting trial or arraignments were also from the minority groups. Although the bail system had the purpose of allowing defendants to be released pending their appearance in court, the due process clause or doctrine of fairness has worked basically for the rich who have the money to pay the cost of bail. Bail operates to punish and penalize the poor by confining them to the nation's jails without a conviction.

Bail and The Poor

The effect of money bail on the poor is shown by the fact that in 1971 where the bond fee was only 5% 25% of the defendants were unable to raise even the

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[1]Abraham Brumfield, The Criminal Justice System, New York: Harper & Row, 1970), p. 9.

[2]Brumfield, p. 13.

$25 required to furnish $500 bail.[1] At the same time, the wealthy businessmen and professional criminals have no difficulty.[2] It is obvious from the statistics that the constitutional requirements of no excessive bail does not operate for the poor who have difficulty paying bail as low as $25.[3] They are forced to stay behind bars simply because of their impoverished position.

As far as bail is concerned in the criminal justice system, it is left to the discretion of the judge to determine the amount set in relation to the offense. The judge has been attacked for having too much discretionary and unquestionable power in sentencing and in bail setting.[4] It becomes his exclusive authority to decide what is excessive bail and what is not. Bail is said to be denied a person who is likely not to appear in court or considered dangerous to society.

The bail is set extremely high to keep dangerous offenders locked up and unable to commit crimes while awaiting trial is called preventive detention.[5]

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[1]Brumfield, p. 19.

[2]Brumfield, p. 35.

[3]Martin Spillner, Criminal Justice System in America, (New York: Random House, 1972) p. 50.

[4]Spillner, p. 55.

[5]Spillner, p. 57.

The group confronting preventive detention is usually the poor and black political prisoners.[1] Although it is believed the black political prisoners have the ability to use their mass appeal to raise the bail, the trial of H. Rap Brown represented preventive detention as his bail was set at $250,000.[2] The well-to-do criminals and burglars with connections to organized crime simply buy their way out.[3] The rich violators from the political arena or the large corporations follow the same procedures. It is frequently difficult to define dangerous offenders or technically define preventive detention.

The system of bail becomes not only an injustice to the poor defendants but also a burden to the court. It adds to continuous overload of cases confronting the American courts and an abundant amount of money to taxpayers to keep people in jail.[4]

The criminal court is pre-eminently an institution for the poor because most defendants are of the lower economic classes.[5] Therefore, when a judge sets

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[1]Spillner, p. 60.

[2]Brumfield, p. 49.

[3]Spillner, p. 73.

[4]Spillner, p. 79.

[5]Joseph Leonhard, The Deficiency of American Justice, (Chicago: Mullington & Col 1967) p. 24.

bail allowing the defendants to go free pending the procedures in a second level court, it is no surprise that many men cannot produce the money for bail.[1] Others are denied the privilege of bail by the judge because of the seriousness of their alleged offense. Sixty-seven percent of prisoners in 1970 were not released on bail.[2] The due process doctrine tends to be imbalanced and unequal in its dealing with the poor.

The Lawyer and the Poor

In the pioneering work on plea bargaining, the presence of a lawyer makes little difference in the decision to negotiate for a lighter sentence. In 1970, 60.4% of the offenders confronting American courts pleaded guilty after plea bargaining over the charge or sentence.[3] Fifteen percent of the offenders pleaded guilty to a lesser charge, 31% of the defendants pleaded guilty for a lighter sentence, 5% pleaded for concurrent sentences and 9% pleaded for the dismissal of charges.[4]

The role of the defense attorney became one of a court mediator or bargainer meeting with the prosecutor

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[1]Brumfield, p. 54.

[2]Brumfield, p. 57.

[3]Brumfield, p. 60.

[4]Donald Casper, The Role of Legal Profession in American Justice, (Chicago: Bulwark Press, 1967) p. 100.

to set up an arrangement speeding up the trial without providing justice.[1] The defendants obtained lawyers with no interest or desire in providing them with a fair trial or proving their innocence. The counsel bypassed justice by persuading the impoverished defendants to plead guilty to a crime that they may not have committed. The due process clause is evaded by a criminal justice system that assumes guilt during the bargaining stage without providing the indigent defendents with the best possible defense.[2]

Since the Constitution also calls for the right of counsel for the poor, it is useful to evaluate the sentiment among most of the minorities toward the public defender system. The defendants tend to feel the public defender system provides a poor quality of effort in their defense.[3] It has been suggested that because they handle so many cases, they are not only overtaxed, but they are part of the court assuming the viewpoint of the prosecution.[4]

Due to the limited funds available for the public

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[1]Casper, p. 107.

[2]Casper, p. 109.

[3]Casper, p. 113.

[4]Eleanor Lee, The Inequality of the American Law, (Detroit: Sharp & Inc. 1969). p. 207.

defenders in the counseling of the poor, the interest of the public defender in the defense of the poor is very low. They have created a close alliance with the prosecutor. The public defenders unite with the prosecution to arrange a plea bargain for the defendants which saves the court time and money.[1] A defendant who was metaphorically inclined described the relationship with his lawyer and the nature of the deal as follows:

> It's just like, you know, you got a junkie there you know, and he knows he needs a bag of dope, you know what I mean, and you tell him, "well here is the bag of dope if you want it, or you gotta suffer it out." If you want to, I mean, you don't have to take it, when you know damn well he is gonna snatch at it, you know, 'cause the man is sick, you know what I mean.[2]

This defendant had a very low opinion of the public defender simply because he viewed him as a man with no concern for human dilemmas. His only concern was to persuade the defendants in believing a plea bargain was their alternative. It meant a less severe punitive measure than the greater penalty. The defendant continued his discourse of the public defender and his comparison of the public defender with the drug pusher by saying:

Sure, you know, it's as if someone said to a junkie,

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[1] Lee, p. 234.

[2] Lee, p. 245.

> well here is the bag of dope, if you want it, you can take it, if you don't . . . well, you know, you say, 'yeh, I want it, I want it, you know, I'm sick, man. You know, that's the way it is. It's nothing big to him. Like, I say, he makes deals like this every day.[1]

There were others making comments about their experiences in the Fourth District Court in Washington, D. C.

> "A public defender is just like the prosecutor's assistant. Anything you tell this man, he is not going to do anything about it, but relay it to the prosecutor. They will come to some sort of agreement, and that is the best you are gonna get, you know, whatever they come to he brings back to you the first time, well you better take it because you may not get another chance."[2]

> ". . .He is just playing a middle game. You know, you are the public defender, you do not really care about what happens to me and I do not know you. . . you do not know me . . . this is your job, so you are gonna go up there and say a little bit, you know, make it look like you are trying to help me, but actually you do not give a damn."[3]

The interview of the defendants of the Fourth District Court in the District of Columbia was done by Jonathan Casper's article "Did You Have A Lawyer When You Went To Court? No, I had a Public Defender." Most of the defendants represented by the public defenders did not feel their lawyers were on their side. They saw the public defender as a middle man or an agent of the

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[1]Lee, p. 245.

[2]Lee, p. 252.

[3]William Mates, Racial and Class Components of American Law (Chicago: Foster Press, 1970) p. 29.

prosecution. The public defender spent only about five to ten minutes with them during the preparation for their trials in the courtroom.[1]

All of the defendants interviewed by Casper felt the poor fared worse under the criminal justice system than the affluent. They did not believe their constitutional rights were effectively secure or promoted by their lawyers. The public defender like the prosecuting attorney had internalized the market place ethics of the American society.[2] Since the poor did not have the wealth of the affluent, they could not expect to get the best possible legal services. The idea of due process and fairness is highly manipulated by the accumulation of capital.[3] The legal repression confronted by the poor portrays American justice as one highly dictated by economic interests and status.

The public defender plays the role of an adversary to the prosecutor providing the defendants with the constitutional right of counsel. This adversary role is an instrument of deception concealing the fact that the public defender does not provide adequate legal counsel.

Although the courts were said to have changed their

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[1]Mates, p. 54.

[2]Robert Leftcourt, The Law Against the People, (New York: Random House, 1974) p. 65.

[3]Leftcourt, p. 70.

positions through the years on the right of indigent people to counsel, the court's ruling in the decision of Gideon v. Wainwright has not improved legal defense of indigent people. In the above case, the Supreme Court said the poor must have the right to counsel but the Court never questions the ability of the lawyer to defend or the interest of the lawyer in developing the best possible defense in securing the rights of the poor.[1] Other cases where the Supreme Court ruled the indigent must be supplied with adequate defense include Argersinger v. Hamiln, Escobedo v. Illinois, and Miranda v. Arizona.[2]

Robert Leftcourt's Law Against the People considers the American justice system and lawyers profiting from established businesses and corporations while the society collapses from poverty. The alternatives to establishment law, such as poverty law programs or public interest law firms, pay very little.[3] The poverty law firms are considered dull and frustrating with only enough funds to accommodate a handful of lawyers.[4] The Wall

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[1] Leftcourt, p. 77.

[2] Leftcourt, p. 83.

[3] Leftcourt, p. 93.

[4] Brumfield, p. 205.

Street, Washington, and other corporate lawyers throughout the country have shaped the legal system into a servant of corporate interests with the myth of the equality under law and the due process clause gone bankrupt.[1]

Poverty law, public interest law, and many other forms of law benefiting the lower economic classes does not interest corporate lawyers simply because there is no money in the area.[2] The lawyer like the plant worker in the industrial plant utilizes the legal institution as a source of livelihood and prosperity. Since the underprivileged citizens of the United States cannot afford their services, they did not receive the due process of equality under the law attained by the large and wealthy corporations.

Florence Kennedy's whorehouse theory of the law views the American system of justice and most especially the legal profession as a whorehouse serving those best able to afford the luxuries of justice offered to preferred customers.[3] The only difference between the lawyer and the prostitute is that of honestly seeking a dollar while the lawyer dishonestly claims that justice

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[1]Brumfield, p. 209.

[2]John Reuss, Victims of American Justice, (Los Angeles: Houghlin Inc., 1968) p. 319.

[3]Reuss, p. 340.

or service to mankind is his primary purpose.[1] The majority of the country's lawyers represent and support the cause of clients capable of placing the highest fees in their hands. They operate from the whorehouses of Standard Oil, International Business Machines, ATT, ITT, Gulf Oil, and other members of the rich corporate families protecting their interests for very high salaries. The young law graduates coming from Yale, Harvard, the Pacific Coast Law Schools, and mid-Atlanta Law Schools are searching for employment in the very same whorehouses.[2]

The courts, lawyers, and the ABA are part of the whole system of prosecution, persecution, oppression, and prostitution utilizing the law as a source of income.[3] The lawyer like the hustler or whore on the street is out to sell his services to the highest bidder.[4] Unfortunately, the humanitarian services of the impoverished does not arouse their interest because the poor do not possess the wealth of the large corporations.

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[1]Reuss, p. 355.

[2]Spillner, p. 70.

[3]Spillner, p. 78.

[4]William Green, American Criminal Justice and Minority Dissent, (New Jersey: Princeton Press, 1973) p. 417.

When one analyzes the role of the law firms as a profiteer, the legal corporation like any other business exist for profits. The salaries of the partners and associates depict the legal organization as one of great profits and a promising means for employment. In 1973-74, there was a large rise in the salaries coming from large firms throughout the country for beginning lawyers.[1] The New York Wall Street firms saw first year associates making $18,000 in 1973 and $19,000 in 1974 as a starting salary.[2] Cities like Boston, Chicago, Cleveland, and Washington indicated raises from $1,000 to $2,000 over salaries in 1972.[3] When one evaluates the salary in relation to the universities lawyers attend, the University of Cornell was among the highest paid lawyers receiving $20,000 at the most and $16,000 as the mean salary.[4] The other universities like Georgetown, Villanova, Los Angeles law schools, New York schools, San Francisco and Seattle schools were paying $20,000, $19,500, $17,500, $19,000, $15,000 and $13,000 for beginning lawyers.[5] The mean and average salary of the lawyers was $15,000

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[1]Green, p. 430.

[2]Green, p. 437.

[3]Spillner, p. 90.

[4]Brumfield, p. 299.

While the lawyers start with impressive salaries as legal apprentices, the profession is one where the salary increases with age, seniority, and status. The salaries in the New York, Atlantic Coast, Pacific Coast and Washington firms tend to increase as the lawyer gets older and attains seniority. The age of fifty or between forty and sixty usually typify high prosperity years for the lawyers.[1] At this age the lawyer has attained profits from partnerships in rich firms.

These attractive salaries received by corporate lawyers have created a society where the young law students in these schools show little interest or concern in the area of civil liberties because the attractive salaries of the mid-Atlantic, New York, and Pacific Coast firms went to lawyers hired by the large corporations.[2] The underprivileged citizens do not have this kind of money or economic wealth to pay for the services of the lawyer.

The Supreme Court takes a non-intervention policy on the fees the legal firms charges both the corporations

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[1]Leftcourt, p. 76.

[2]Leftcourt, p. 90.

and citizens. While the court gives the legal firms complete autonomy in the assessment, it requires each party to meet its responsibility for paying their fee charges.[1] The rich clients from the corporate family can be overcharged by the legal profession without losing its business. One sees the whorehouse theory of law working in reality with the lawyer selling his services to those paying the most for their services. The large receipts and earnings of the corporate lawyer does not come from legal fees attained from the poor, but instead the large industrial firms.

American Courts and Minority Discrimination in Employment

Since the passage of the 1964 Civil Rights Act, the Supreme Court has consistently confronted the task of finding remedies for racial discrimination in employment. Title VII of the Civil Rights Act called for the equal employment of blacks in the hiring of industrial employees.[2] In 1972, the Supreme Court found itself confronted with the dilemma of evolving an effective solution to unfair practices in employment. The court looked at the case of Griggs vs Duke Power Company to find a final remedy to the continuous racial dis-

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[1]Paul Sanger, Minority Rights and Court Protection, (Chicago: Serling Inc., 1969). p. 45.

[2]Sanger, p. 66.

crimination in employment. It is important at this point to make a distinction between criminal and civil law. The violations and allegations made by the employees against corporations are civil offenses and suits. They are not criminal offenses made against societal members. While the criminal law consist of crimes of physical harm or property damages, offenses falling in the category of civil law consists of suits, violations of laws regulating corporate behavior and allegations made by personnel within the corporate setting.[1] An evaluation of civil law is very important because dilemmas such as racism and discrimination in employment affect the living conditions of the working class.

In Griggs vs Duke Power Company, the Supreme Court reviewed a decision by a lower court which held the employer in violation of Title VII of the 1964 Civil Rights Act by requiring a high school diploma and the passage of an intelligence test to attain employment.[2] The lower court's ruling stated that the administering of a test or the possession of a high school diploma was not related to the successful performance of the job.[3] The Griggs decision was considered the precedent to

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[1]Sanger, p. 73.

[2]Sanger, p. 109.

[3]Brumfield, p. 315.

utilize as a remedy to the problem of racial discrimination in employment.

In dealing with the use of standardized tests as a vehicle for hiring employees, the Supreme Court ruled that one had to decide whether it was an intentional discrimination. Until 1965, the Duke Power Company openly discriminated on the basis of race in the hiring and assigning of employees at its Dan River Plant.[1] Black employees were relegated to (1) the labor with the lowest paying jobs and (2) the departmental promotions were based on departmental and not plant-wide seniorities.[2] Despite the plant-wide seniority of the black employees, they did not receive promotions within the labor department. In 1965, the black employees at Duke Power Company were retuired to pass two professionally prepared aptitude tests. These were the Wonderlic Personnel Test and the Benet Mechanical Aptitude Test.[3]

The new labor policy at the plant became effective in September 1965 as the agency attached the posession of a high school diploma along with the passage of these two tests.[4] The incumbent black employees in the labor

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[1]Brumfield, p. 327.

[2]Milton Rosenberg, The American Lawyer: Bargainer of Justice (New York: Schuster and Company, 1970), p. 573.

[3]Rosenberg, p. 582.

[4]Rosenberg, p. 584.

department who lacked a high school education could transfer out of the labor department by the passing of the two aptitude tests. The black employees viewed the actions as an attempt to prevent blacks from finding employment, promotion and economic mobility within the agency.

The opinion of the Supreme Court was rather interesting because the Court made a technical distinction between intentional and unintentional discrimination.[1] The Court said the actions of the Duke Power Company in regards to black employment and promotion did not represent an intent to discriminate and regulatory laws are not violated unless they are intentionally violated.[2] The Court wrote, in its concurring opinion there was no where in Title VII of the Equal Employment Act which said employees had to abandon bonafide qualification tests.[3] The Supreme Court escaped its responsibility of protecting blacks from racism and discrimination in employment by supporting the right of the employer to administer examinations as a method of test qualifications.[4] The use of intentional and unintentional discri-

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[1]Rosenberg, p. 585.

[2]Rosenberg, 589.

[3]Brumfield, p. 356.

[4]Samuel Lehman, A Criminal Justice System, (New York: Harper & Row, 1971). p. 227.

mination provided the Court and the employer with a vehicle to close their doors to blacks. When blacks did not get hired or promoted, it was not because of discrimination but instead a lack of qualifications. It falls on the back of the EEOC to develop a case by case approach in conjunction with its rule-making authority to answer questions concerning test jobs correlation factors and determining what is otherwise required beyond the guidelines.[1] The EEOC was the regulatory body created as a watchdog agency forcing the employer to abide by the standards of the Equal Employment Act.[2]

The agency has been unsuccessful in utilizing the Court to eliminate discrimination in employment. The Court has successfully resorted to the doctrine of unintentional discrimination to support the rights of the employer to hire, fire, and promote whoever he wishes.[3]

The Motorola vs Myart Case provided the same kind of technical problem for the Court. The Motorola Company applied a labor policy also requiring successful achievement on a personnel test before black applicants could be hired.[4] In the case of Motorola vs Myart, the black appli-

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[1]Lehman, p. 230.

[2]Lehman, p. 261.

[3]Lehman, p. 265.

[4]Lehman, p. 269.

cant, Myart, considered a test an instrument for discrimination because it was culturally biased to his disadvantage and administered in violation of the Illinois anti-discrimination laws.[1] It also violated the Equal Employment Act of 1964.[2] The definition the Company gave to the concept cultural bias was a test which does not effectively take into account the educational, social, and cultural deprivation of blacks.[3] The defense for Myart said, "in assuming an absence of qualifications for the jobs in question, the employer should replace the testing procedures with on the job training for perspective black employees."[4]

The Fair Employment Commission of Illinois stated that the Court should condemn all personnel tests not free of cultural bias and give the perspective employee the kind of training he needed.[5] The Burger Court said the issue of jobs - relatedness of the Standard Test for employment was unconstitutional if it was used as a barrier of discrimination. The Court left the matter

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[1]Howard James, Crisis in the Court, (New York: McKay, Inc. 1968) p. 32.

[2]James, p. 40.

[3]James, p. 51.

[4]James, p. 59.

[5]Robert Conot, American Courts on Trial, (Mass. Oxford Press, 1968). p. 668.

unresolved by saying it had to decide the inseparable question of whether it was intentional or unintentional discrimination, or a resource for administrative efficiency.[1] Intentional discrimination has to be proven and cultural bias has to be clearly defined. The Burger Court required an effective method for defining how to eliminate or even know what questions were culturally biased.[2]

The Court also encountered the task of deciding whether the test served as a vital tool for improving the administrative skills and expertise of the industrial plants. The court presented the employer the right to select the most qualified people to increase its output. The EEOC had the task of defining cultural bias and intentional discrimination in a manner capable of illustrating how it adversely affects hiring, promotion, transfer or any other type of employment.[3]

Presently, there are many cases where the employers have not hired or promoted blacks because of a failure to past achievement tests. Charges of discrimination are sent to the EEOC and lawyers confront the task of burden of proof.[4]

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[1]Conot, p. 671.

[2]Conot, p. 677.

[3]Conot, p. 680.

[4]Conot, p. 685.

The Philadelphia Plan presented a new remedy for the problem of equal employment for blacks. The Philadelphia Plan was reviewed by both the Justice epartment, Labor Department, and the American courts as a model utilized to bring fair practices in hiring.[1]

The courts, labor departments, employment commissions, and justice departments decided to review the Philadelphia plan and modify it to eliminate labor disputes with management based on discrimination. The union halls throughout the country were symbolized as agencies responsible for attaining employment for its members through collective bargaining.[2] When the black workers of Philadelphia began to complain, the employers said it was the responsibility of the union halls to see that all of its members are hired.[3]

The Philadelphia plan found opposition from black iron and steel workers who felt the contracting union associations in Philadelphia was not living up to its end of the bargain. In a Philadelphia industrial plant committed to hire at least 13% of black employees, the black employees made their complaint to the EEOC to force the employer to stand by his agreement.[4]

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[1]Spillner, p. 334.

[2]John Barnett, Criminal Justice and Efficiency, (Chicago: Quadrangle Book Inc.,1967) p. 5.

[3]Barnett, p. 21

[4]Barnett,p. 30.

The Commission had been very ineffective in forcing the industrial plant to place the blame on the union halls. The courts, justice department, and the labor department supported the sentiments of the employers by saying it was the function of the union halls to find employment for its members.[1]

The 1972 modified Philadelphia plan called for the employers to keep a list of the names and percentage of black employees within the industrial setting.[2] The court would take a non-intervention policy with total dependence on the union halls of Philadelphis to protect the rights of black employees. The plan urged the local union halls to meet their obligation to find employment for labors in local plants.[3] The job of the union hall was to force the industrial plants to contract dealings with the percentage of blacks to be hired.

The Philadelphia Plan supported the Supreme Court decisions in the Griggs and Motorola cases. It failed in providing a remedy to end discrimination in employment. In each of the three solutions, the court's power of interpretation became an important factor by forcing regulatory agencies to distinguish between intentional

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[1]Jerome H. Skolnick, American Courts: A Weapon of Social Control, (New York: Random House, 1973) p. 290.

[2]Skolnick, p. 297.

[3]Skolnick, p. 300.

and unintentional discrimination.[1] The Court was a proponent of the idea of unintentional discrimination doctrine which serves as a legal weapon supporting the right of the industrial corporation to hire of fire anyone it desired. The unintentional discrimination doctrine allows the employer to have complete autonomy in the internal affairs of his business.

The employer-labor disputes between blacks and management were highlighted by the ineffective presidential orders of both Presidents Johnson and Kennedy in 1964 and 1961. The executive orders said the employers had to comply to the anti-discrimination standards of the Equal Employment Act.[2] The executive orders represented reluctant reform measures that were not enforced by either Johnson or Kennedy.

In concluding, the criminal justice system reflects an institution highly motivated and influenced by class interest. It utilizes its control over legal interpretations and definitions of the law to meet the interest of the rich and it becomes the enemy of the poor. As an enemy of the poor, the criminal justice system meets its efficiency level by placing 85 percent to 90 percent of the poor defendants under guilty pleas. This high percentage of

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[1]Donald J. Newman, The Determination of Guilt or Innocence (Boston: Little and Brown, Inc., 1966), p. 9.

[2]Newman, p. 15.

guilty pleas provides the society with a feeling of protection and safety.

The wealthy defendants have no problems meeting the cost of bail. Although the court depicts an adversary system with adequate defense of the poor, the legal counsels for the poor possess no interest in fairness or protection of rights of the poor during the trial stages.

The legal profession is concerned with the cases providing abundant profits. The underprivileged do not have the economic funds to attain the best possible defense. The Court presents them with the public defender because it allows the legal profession to meet the constitutional requirement of providing counsel to the indigent. The public defender has shown little concern in the right of the poor to a fair trial because poverty law does not give him the high fees of a corporate lawyer. The ABA lawyers enter the legal profession expecting to increase their profits. It is a source of livelihood. Since there are little funds in poverty law or public welfare law, corporate law becomes very attractive.

The ABA shapes the policies, laws, and norms that govern our society and institutions. It is no different from any other interest groups which exist to promote

its demands and goals. The interests of the ABA are created on both class and economic lines. It has failed in providing the poor with a fair trial, adequate counsel, and less discrimination simply because the poor do not have the funds to make their goals in life a reality. The legal institution has used terms like burden of proof, administrative, efficiency, and unintentional discrimination to facilitate discrimination in employment. The end result has been a society without constitutional protection of human rights and fairness in American courts.

CHAPTER V

THE BLACK BAR, STRATEGIES FOR CONSTITUTIONAL REFORM, AND SOCIAL CHANGE

This chapter will examine the utility of black organizations as weapons of social change. It is essential to determine whether the organizations or alternatives designed for social change have been individual capitalists. A very good place to begin in searching for strategic pillars or reluctant reformers would be the National Bar Association. The formation of the NBA represented an attempt to form a separate legal profession devoted to the capitalist interest of the NBA lawyers. Although the organization advocated the need for constitutional reform, minimum cost in legal services for the poor, and the need to utilize the constitution to protect the rights of the poor, the NBA was a union concerned with the economic interests of its members.

The motto of the organization was geared toward improving the education, employment, and housing of the poor.

The NBA endeavors to monitor and improve the legal assistance given to the poor by forcing the court to abide by the constitutional guidelines for due process, right of counsel, fair and speedy trial, no excessive bail and complete equality for the general welfare of all.[1] The NBA has failed to live up to its socialist aspirations within the motto. The organization has done very little to improve the legal counsel, housing, education, employment, or judicial representation of the poor. It has developed into a carbon copy of the ABA dictated by capitalist profits and the need for corporate employment.

The rhetoric of the organization about community development and minority rights was only a symbolic tool of deception hiding the main objective. The NBA wanted to separate from the ABA because the members were not in positions of leadership.[2] They did not find the economic advancement gained by the ABA lawyers in corporate law. The black lawyers had no influence over the internal decisions of the ABA.

The NBA was not interested in poverty law, public welfare, or community development. Both ABA and the NBA were interested in the problems of the corporate

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[1]Basil Davidson, History and Development of the American Bar Association, (New York: Pantheon Press, 1968) p. 307.

[2]Davidson, p. 315.

world. The organizations evaded the problems of the poor. While the NBA attacked the ABA as a racist organization, both unions were elitist and classist. NBA and the ABA wanted to use the law and the constitution to promote commercial activities and profits. The NBA did not grow out of the need to create a judicial and criminal justice system responsive to the needs of the poor. It did not attempt to force the criminal justice system to meet its constitutional obligation to secure the rights of the minorities. The NBA like the ABA have made justice the subject of material wealth.[1]

Both the NBA and ABA have supported a judicial structure blind to the imperative of ensuring equality of the law.[2] The NBA and the ABA advocated a desire to protect the constitutional liberties of minorities and end systematic oppression. The criminal justice system continues to accuse, arrest, convict, and incarcerate minorities at relatively high rates.[3] Although both unions are vital agents within the criminal justice system, the two bar associations have continued to concentrate on economic matters.

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[1]Davidson, p. 320.

[2]Harry Gailey, The Evolution of the American Bar, (Mass. Harvard University Press, 1960), p. 557.

The History of the NBA

The NBA was founded in 1925 to strengthen and elevate the Negro lawyer in his relationship to his people and to create a bond of fellowship among the lawyers to uplift and advance the social and economic conditions of minorities.[1] The first step toward bringing blacks together took place in 1924. In 1924, 1200 black lawyers met in Chicago in the summer representing Cook County Bar, Chicago Bar, Iowa Bar, and the Philadelphia Bar to create a national organization to supplement and spawn local bar associations.[2] The white bar associations locally and nationally refused to admit blacks to the bar. For the first thirty-four years of the ABA's existence, the organization barred black lawyers.[3] When the ABA admitted the first three blacks in 1912, the organizations adopted a policy requiring black applicants to identify themselves racially.[4]

George A. Woodson from DesMoines was president of the newly evolved organization, Joe Brown of Cook County was the vice-president, the other members were Charles

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[1]Gailey, p. 563.

[2]Gailey, p. 567.

[3]Gailey, 573.

[4]Gilbert Ware, Voices for Equal Justices, (New York: University Press, 1968) p. 12.

Anderson of Pennsylvania as the early founders of the National Bar Association.[1] The motto of the organization was to use the law to advance the cause of equal justice for their people. The NBA members were the chief and exclusive counsel in twenty cases before the United States Supreme Court between the years 1923 to 1941.[2] The NBA leaders such as Charles Anderson urged black lawyers to accept the challenge of solving the problems that beset the black people. Due to the failure of the ABA to actively respond to these problems, the NBA realized the fight against legal repression involves more than mere speechmaking. It takes leadership, mass mobilization, ideological clarity along with organized risks and central planning.

At the NBA's 50th anniversary, Justice Robert C. Nix, Jr. the black member of the Pennsylvania Supreme Court, told his fellow members in Chicago in July 26, 1974, "In the past, the most significant accomplishments of the NBA represented the efforts of single individuals."[3] The NBA Could be more effective as a unified organization collecting its internal personnel and proceeding as a cohesive group. Numerically and organizationally

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[1]Ware, p. 15.

[2]Ware, p. 19.

[3]Ware, p. 37.

the black bar and bench has suffered from being too thin and frail.[1] When one considers the role of the black judge in the judicial process, black judges in the years 1971-72 were outnumbered 2,521 to 294 at the state and local levels.[2] On the federal level, only 31 among 475 judges were black.[3]

There are many blacks with membership in both the ABA and NBA because the ABA possesses more technical and legal resources than the NBA. These black lawyers consider their affiliation with the ABA as a stepping stone to economic mobility in the legal status. While the NBA originated as an organization with the function of improving the legal representation of minorities within the criminal justice system, some of the black lawyers considered the ABA essential to their careers.

The NBA labels the American concept of justice as systematic oppression beneficial to the owners of wealth and prosperity within the American society. Undergirding the fallacies within the American system of justice is the economic and propertied interest of the society

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[1]John Middleton, Equality From the Law, (New York: New York University Press, 1968) p. 427.

[2]Middleton, p. 433.

[3]Middleton, p. 451.

responsible for a constitutional document responsive to the interest groups.[1] The due process and fairness doctrine of the Constitution protects the goals of the automobile, steel, oil, land-owning groups, metal companies, aluminum industries, banking institutions, aviation, and numerous wealthy commercial industries throughout the country.[2]

The ABA and NBA lawyers possessing the responsibility to enforce the general welfare clause of the Constitution are closely affiliated with these big corporations and have a vested interest in preserving the rules and procedures that undergird their claim to the legal profession.[3]

The evolution of the NBA typified the creation of reluctant reformer. The NBA provided no strategies or alternatives to the dilemmas of the socially, politically and economically disadvantaged. It was an interest group with the same motives as the ABA. The NBA lawyers did not leave the ABA only because of racism. The lawyers saw no opportunity for economic mobility. The ABA did not satisfy their economic needs.

While black lawyers were excluded from the ABA until 1912, the NBA was not formed until 1925.

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[1]Ware, p. 57.

[2]Ware, p. 69.

[3]Paul Cruise, The American Poor and the American Judicial System, (London: Oxford Press: 1965), p. 129.

The basic barriers the ABA presented to the black lawyers were the lack of leadership positions; no influence in the internal decisions of the ABA; admission requirements were said to be discriminatory, and the black lawyers had difficulty finding employment.[1] The creation of their own organization led to a duplication of the ABA. The NBA had state bar associations like ABA. The constitutions and code of ethics were the same. Both constitutions made the two bars chartered associations devoted to the commercial needs of the state.[2] The bar was created as an agent of the state to promote commercial development and growth. The constitutions clearly discussed the role of the lawyer as a protector of social organization. He must be influential in the preservation of the values, norms, and mores of the society. Therefore, he has the obligation to preserve the capitalist ethic.[3]

The NBA and ABA constitutions and statutes give the lawyer the task of shaping the policies, laws, and regulations that dictate the behavior of society. The NBA and ABA lawyers have the task of eliminating

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[1]Cruise, p. 131.

[2]Cruise, p. 133.

[3]Cruise, p. 136.

dissidence within society. Dissidence and disobedience leads to social disorganization. Both constitutions concentrate on the role of the lawyer to promote social control and capitalist advancement.[1]

The NBA and ABA statutes concentrate on the protection of the rights and interests of the lawyers. It is a professional club concerned with the employment and advancement of its members in corporate activities.[2] The organization as an interest group supports the economic interests of the lawyers within the corporate world. It has the responsibility to see that the lawyers receive their fees.

The NBA and ABA also placed a section within the Constitution on ethics and behavior of their members. The members are expected to support, defend, and obey the law. The organizations are designed to be fraternal with each member concerned with the common interest of the group as a whole. Lawyers within the associations are not expected to attack their fellow members, judges, or the criminal justice system itself. They are units of the criminal justice system with the task of making it more efficient. The ABA lawyers were not suppose to

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[1]Cruise, p. 139.

[2]Robert Evans, A Prescription for Change (Chicago: Routledge and Kegan Press, 1965), p. 200.

verbally attack the judges dissenting with their personal philosophies.

The dissention between the lawyers and judges would divert the attention of the court from the administration of justice. As a professional club, the NBA andABA lawyers would not engage in verbal assaults in the private lives of its members.[1] The NBA and ABA lawyers created committees of lawyers to investigate disbarment charges.[2] The lawyers very seldom disbar any of its members.[3] It is a professional club responsive to the interests of lawyers on a whole.

The NBA and ABA constitutions and statutes reflect guidelines to protect the economic motives of professional and economic elites. Both unions are profiteers seeking wealth through their legal expertise. They were unions depicting reluctant reformers concerned with individual objectives. The ABA and NBA were lawyers, with the skills to utilize the system for profits. Both groups were responsible for systematic oppression and legal repression. Minorities never received the free and adequate legal representation promised by the NBA.

The National Conference of Black Lawyers, Rutgers plan, and the relevant lawyers discussed in Ann Ginger's

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[1]Evans, p. 206.

[2]Evans, p. 209.

[3]Ware, p. 90.

book the Relevant Lawyers, attempts to find social economic, and political change for the poor by reforming the American idea of constitutionalism. They attempt to utilize the law to secure the rights of the minorities. These organizations strive to attain some utility from the Constitution by utilizing the general welfare clause, the Bill of Rights and the due process clause to make the idea of an egalitarian reality.

Another strategic pillar representing an instrument to combat the classism and discrimination of the law against the poor has been the formation of the National Conference of Black Lawyers in May, 1969.[1] The service of Judge Robert L. Carter as chairman was harmonious with his call for collective and comprehensive action by black lawyers to promote the interests of black people. The NCBL was not interested in forming another Bar Association in alliance with the NBA but instead to find a way to provide the black lawyers with the available resources for helping their people and themselves fight legal repression.[2] The NBA did not have the data collection, or library resources, equipment, size, funds, prestige or technical assistance found in the ABA.[3] The NCBL requested the NBA to marshall some

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[1]Ware, p. 92.

[2]Ware, p. 105.

[3]Richard Greenfield, A Critique of American Criminal Justice (New York: Random House, 1970), p. 613.

type of program capable of mobilizing the black community, black lawyers, black students, and activists organizations to provide both the NBA and the NCBL with the equipment and support needed to combat the ABA and the repressive criminal justice system. The NCBL beleived the NBA had been unsuccesful because of a failure to mobilize black people in support of their efforts. The organizations maintained their separate identity with the responsibility of developing economic resources moral support, technical assistance, and unity within the black community. The NBA lawyers were attacked by the NCBL for placing individual goals before the collective needs of the community.

The NCBL proposes activism to secure the rights of the relatively deprived. The ABA united with the court system supporting the interest of business. The judges of the United States Courts came exclusively from the ABA and formulate the policies for corporate advocacy, regulatory bodies, judicial opinions and congressional statutes regulating both private and public behavior.[1] The NCBL calls for the black law student to take part in the fight against systematic oppression. The black students compose only 4,817 of the 106,102 law students in 1973-74.[2] The small percentage of law students throughout the country shows the success

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[1] Greenfield, p. 620.

[2] Greenfield, p. 627.

of the ABA in eliminating black lawyers through questionable and controversial admission guidelines.

Two years after the emergence of the NCBLj the organization became involved in the litigation resulting from the rebellion of prisoners at Attica Correctional Institution and the retaking of the prison by the state police between September 7 and 13 in 1970.[1] The organization became involved when the black inmates began to call on the black lawyers to defend the 60 blacks indicted in the uprising.[2] Also illustrative of the NCBL's activism was its organization of the successful defense of Angela Davis, the lawsuits against Judge Julius Hoffman, who gagged, bound, and chained Bobby Seale of the Black Panther Party during the trial of the Chicago Seven, and representation of Cornel Students who took up arms in self-defense.[3] The organization attempted to end the repression and brutality of law enforcement officers who arrest and even murder Black Panthers.[4] The organization desires to find the means that would force the Constitution to live up to its' wording and doctrines of due process, fairness, general welfare, and equality for minorities.

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[1]Greenfield, p. 637.

[2]Charles Mitchell, The Reforming of the Criminal Justice System (Detroit: Mullington Press, 1973), p. 9.

[3]Mitchell, p. 24.

[4]Mitchell, p. 33.

The NCBL attempts to articulate, define, insulate, insure, and defend the rights of blacks and other powerless segments of the society seeking social change through affirmative litigation, criminal defenses, monitoring governmental activity and providing technical assistance to the black bar nationally defending the struggly against systematic oppression and legal repression.[1] The success of the NCBL depends on a strong and effective alliance with the National Guild Association, National Bar Association, American Civil Liberties Union, Spanish Speaking Law Association, individual black lawyers, individual black students, community groups, and allies.[2] The alliance with all these organizations was designed to increase support within the organization and create a collective organ for social change with the size to mobilize the resources required to allow the organization to compete against profiteers of the American Bar Association.

The NCBL strives to build an effective coalition with the Puerto Ricans, Indian groups, and Mexican Americans to unite for the same objective of eliminating poverty, joblessness, inadequate health facilities, legal repression, poor housing and other social dilemmas caused by systematic oppression. The ethnic groups

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[1]Herbert Adams, The Plea for Justice (Massachusetts: Harvard University Press, 1973), p. 161.

[2]Adams, p. 191.

unite to increase their size, funds, and resources. Since the ethnic groups have conflicting interests, the coalition represents reluctant reformers using the united ethnic groups to gain concessions from the existing system.

The NCBL and the NBA considered the effective implementation of the Constitutional Amendments against excessive bail, the right to counsel, and a fair and speedy trail, a productive weapon for due process in American courts, Both organizations supported a judicial system with black lawyers, black judges, black jurists and parole officers using the Constitutional requirements for due process, equality, fair trials, and capable counsels to give the poor the best possible legal defense. The NBA and the NCBL have to use their legal expertise to make the Bill of Rights and the amendment against excessive bail a reality utilized to make the criminal justice system a tool for assuring both equality and fairness for minority defendants.

Another plan developed to improve the legal services of the underprivileged as the Rutgers Report in 1919.[1] The report was a movement in response to the 1967 civil uprising in Newark which left many minorities without adequate legal defense. Newark's population in 1970

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[1]Adams, p. 193.

was about 400,000 at least 60% black, and Puerto Ricans; more than 58% of the households have incomes of less than 7,000 dollars, 12% had incomes under 3,000 dollars.[1] Although the election of Kenneth Gibson gave blacks an electoral gain, the economic and property relations in the city had not changed.[2] The decay and corruption from the misuse of political, economic, and social power under the lily-white administration still exist.[3]

The Rutger's Report, found in the book by Robert Leftcourt, The Law Against the People serves as a model for examining the disadvantages encountered by the ABA law schools with a bourgeois education.[4] In Leftcourt's article, "The white law school and the black liberation struggle, the ABA schools are attacked for its abundant concentration on the problems of the corporate world.[5] The curriculum consisted of business management, business law, contractual agreements, property settlements and claims, international law, international agreements and settlements, and courses related to corporate advocacy.[6]

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[1]Mitchell, p. 60.

[2]Ware, p. 199.

[3]Richard Hall, The High Price of Justice, (New Haven Conn., Yale University Press, 1965) p. 540.

[4]Hall, p. 547.

[5]Hall, p. 550.

[6]Hall, p. 589.

The Rutgers plan had the intention of reshifting the emphasis on the corporate objectives and creating a restructured law school with students concerned with the legal problems of minorities. The school desired to deal with the lack of black representation in the legal profession. There were fewer than 60 in a bar of 8,000 in 1969.[1] The school made a commitment to graduate 100 minority group students within the five year period beginning in the Fall of 1969.[2] The black lawyers would have the responsibility of providing legal assistance to the ghetto residents and eliminate their alienation from the institutions of government. The black community would redress their legitimate grievance through orderly legal channels led by black lawyers. The major task of the black lawyer was to make the judicial process respond to minority problems. As association composed of black law students would discuss, share and develop strategies to free the underprivileged from systematic oppression and alienation.

The black lawyers under the Rutgers Plan would keep the black liberation leaders out of jail and on

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[1]Leo Kuper, The Legal Assistance for the Poor (Los Angeles: University of California Press, 1975), p. 323.

[2]Kuper, p. 329.

the street to continue the struggle. He had to define the law in human terms exposing oppression and repression and become highly skilled in order to provide basic day to day legal services for the community; bring strategic skills to community planning while fighting for community control of local institutions; and create people lawyers' dedicated to emerging forces for changes against oppression and providing alternatives to the traditional legal and judicial apparatus.[1]

In addressing the problems of developing a curriculum with the large objectives of social change, the Rutgers plan called for the concentration of criminology, criminal justice, the effects and contents of public welfare legislation, public finance, economics and urban development.[2] These courses were expected to provide an outline for correcting the weaknesses within the present system.

The black lawyers had to establish a successful research institute combining political science, sociology, and economics with criminology to undertake investigations into the needs, problems, and proposed solutions to the problems of the urban communities.[3] The Institute

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[1]Kuper, p. 333.

[2]Kuper, p. 344.

[3]Kuper, p. 353.

of Research had to provide a thorough investigation of the implications and failures of welfare laws and legislations. The lawyer had to investigate the failures of the criminal justice system and the constitution to eliminate both systematic oppression and legal repression. The criminal justice system has utilized constitutional laws to create loopholes increasing the social, political, and economic dilemmas of minorities.

The success of the plan will depend on the resources available to the black lawyer, the manpower, mass mobilization within the black community and their effectiveness in competing with the established ABA members supporting the rich.

The black law students, the NBA, and the NCBL combine to fight the central enemy responsible for the success of the capitalist system. The ABA has the resources not found in the NBA, NCBL, community organizations, and the black schools to influence the social, political, and economic thought within the country.

Ann Ginger in her book, The Relevant Lawyers presents a final strategic pillar for the social and political questions of the underprivileged in the struggle for social change. Her plan consist of lawyers from reform organizations in opposition with the lack of

concern for poverty, public welfare, and due process for black political prisoners.[1] The traditional form of justice depicted by the ABA finds efficiency by meeting the demands of the corporation while there is increased repression against the dissent of black law students, political prisoners, and conscientious objectors. The increased monopolization of global firms counseled by skilled corporate lawyers has led to higher appropriations for the enforcement of the law and growing opposition to spending for social welfare.[2]

The so-called relevant lawyers or people's lawyers placed a great deal of faith in the efficient judicial administration of the Bill of Rights and the Fouurteenth Amendment containing the due process protections for the underprivileged.[3] The need for people's lawyers became evident when the ABA attempted to increase the discrimination and legal repression of minorities by proposing a decrease of the 12 member jury to 6 or 8; the lawyers should not be able to question the jury before they are accepted for duty to see whether they are biased; the jury should not have to reach an unanimous verdict so it can be hung by one dissenting vote, but

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[1]Kuper, p. 356.

[2]Colin Legum, Legal Repression of Minorities (Chicago: Mullington Press, 1967), p. 15.

[3]Legum, p. 19.

instead operate by a majority vote.[1] They maintain that some wiretapping and other forms of search and seizure should be permitted; privacy or right of privacy does not extend to welfare recipients; preventive detention without trial is necessary for dangerous criminals; the privilege against self-discrimination can be emasculated; lawyers should be kept in line as officers of the court; and their primary duty to the client must be submerged when the client disagrees with the system.[2] The relevant lawyer has the obligation to make sure the rights and needs of his client come first.

Ginger points out the fact that everybody needs a lawyer. Everyone seems to want a lawyer to defend him against criminal charges, corporate, advocacy, or to file suit against the establishment.[3] The underprivileged citizens want a lawyer who cares about the dilemmas of people. There are very few lawyers from the ABA interested in the cases of the conscientious objectors, public welfare recipients, employees filing suits for discrimination, political prisoners, and

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[1]Legum, p. 25.

[2]Legum p. 31.

[3]John Heath, The Impartial American Court, (Chicago: Bond & Castillo Inc. 1966) p. 20.

dissenters confronting a repressive criminal justice system due to participation in riots in Watts, Newark, Detroit, or the Chicago disorder during the 1968 presidential convention.[1]

The relevant lawyer or people's lawyer must be sensitive to the problems of the relatively deprived. Of the 350,000 American lawyers today throughtout the country, fewer than 10,000 have participated in the cases of political prisoners, conscientious objectors, and the socio-economic dilemmas bringing minorities in contact with the criminal justice system.[2] The cases of the underprivileged are avoided by the other 340,000 lawyers connected with the legal profession because it does not bring high fees and more recognition within the legal profession.[3]

It becomes very essential to distinguish carefully the black lawyers of the minority organizations to determine whether the lawyers are reluctant reformers, proponents of social change, or individualist career-oriented. The lawyers could be utilizing the NBA and problems of the black community to find employment in

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[1]Ann Ginger, The Relevant Lawyers, (New York: Random House, 1974). p. 307.

[2]Ginger, p. 310.

[3]Ginger, p. 312.

some public welfare agency or poverty centers.[1] The black lawyers found within the legal assistance agencies, poverty centers, and welfare agencies have not provided the minority community with adequate social or legal services.[2]

The country's lawyers fall in two categories. They are the corporate lawyers the ABA and fewer than 10,000 are considered people's lawyers. The people's lawyers are concerned with the defense of the Black Panthers, draft refusers, alleged conspirators, affirmative suits for poor people, consumers, prisoners, and students.[3] The relevant lawyer category becomes much smaller when the reformers have no concern for social change or systematic oppression. Many of the lawyers found within public welfare or poverty agencies play a vital role in forcing the recipients of public welfare to conform to the policies within the existing system by using public assistance as a repressor of dissidence.[4] The small percentage of lawyers committed to the end of systematic transformation must force the judge, ABA lawyers, police prosecutor, and public

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[1]Robert Leftcourt, The Law Against the People (New York: Harper & Row, 1972) p. 63.

[2]Leftcourt, p. 64.

[3]Leftcourt, p. 66.

[4]Leftcourt, p. 69.

defenders to abide by those rules. The strategy of people's lawyers rely upon the enforcement of the First, Fifth, and Fourteenth Amendment to buttress their legal arguments.[1]

The lawyers claiming to work for people's rights are not resorting to a new strategy since the NAACP, ACLU, and agencies with the objective of providing legal defense to the poor have also brought their battle to the nation's courts. The strategy of constitutional enforcement has brought little improvement in the lives of the underprivileged.[2] The people's lawyers have chosen a strategy the historic black community organizations have used throughout the years with no positive effect in changing the social, political, and economic conditions of the underprivileged. The strategy has failed because the minority lawyers of the NAACP and the ACLU have not possessed the funds or size to challenge the ABA.

The relevant lawyers defending the cases of the poor cannot rely on the constitution to solve their problems simply because the ABA lawyers continue to dominate the legal profession and circumvent due process and fairness to protect private interests. The major

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[1]Leftcourt, p. 72.

[2]Leftcourt, p. 78.

argument of this chapter is that the constitution does not protect rights of minorities because the legal profession is not prepared to make it do so. The ABA set the rules, laws, policies, and norms regulating societal behavior. The majority of the ABA lawyers are working in corporate firms because the super rich corporations have abundant capital. Poverty law or public welfare law does provide the ABA lawyers with the large incomes found in corporate firms.

The NBA evolved as an organization devoted to social change by applying the Constitution word for word. The NBA accused the ABA of neglecting the constitutional rights of minorities because of race and class interests. The NBA intended to utilize a strict interpretation of the Constitution to protect the liberties of the poor. The organization had the objective of using their legal expertise to make the Bill of Rights, the due process clause, and the doctrine of fairness effective instruments curtailing the discrimination of minorities.

The NCBL and Rutgers plan served as strategic pillars concerned with increasing the number of black lawyers, resources, and the size of organizations created to bring social change. Both strategies were concerned with mass mobilization and developing curriculums within law schools capable of providing solutions to

to the problem of economic development. The organizations also concentrated on the need to make the young black law students aware of the demand for public welfare and poverty law.

All of the strategic pillars mentioned have been futile in bringing social change and economic development in the black community. The NBA has been more concerned with creating an organization assisting the black lawyers to increase their profits. Many of the black lawyers found in the NBA still retain their membership in the ABA. The organization has used social change as a mask hiding their desire to increase their profits through corporate law. The NBA lawyers have created an organization following the pattern set by the ABA. It only represents an alternative to the ABA utilized to benefit the individual goals of the black lawyers.

The final results of the failure of reform organizations in creating an egalitarian society leads to the continuous dictation of the legal profession over the lives of the underprivileged. The ABA lawyers and judges continue to overlook racism and economic exploitation; define morals and ethics; enjoy the profits from corporate advocacy; and utilize the constitution for individual incentives. It utilizes legal repression and systematic oppression to force the relatively deprived to conform to the standards of living it sets.

CHAPTER VI

CONCLUSION

The major hypothesis of this thesis was that the American Constitution is a judicial and economic document that facilitates the exploitation of underprivileged people. This thesis, is an extension of the idea presented by Charles Beard in his book The Economic Interpretation of the Constitution. Beard portrayed the Constitution as an economic document protecting the commercial interests of the founding fathers and their constitutents. These men were primary supporters of commercial development and expansion.

The lawyers, businessmen, politicians, bankers, and industrial elites meeting at the constitutional convention were not humanitarians but instead supporters of an elitist society. The induction of the Bill of Rights four years later concealed the economic concerns and interests of the constitutional delegation. As Madison alluded to in the Federalist papers 10, the new Constitution had to satisfy the desires and goals of the banking interests, land interests, manufacturers

agricultural interests, and industrial interests.

The work of political philosophers Socrates, Plato, Aristotle, Locke, Hobbes, Rousseau, and Machiavelli signified the evolution of ideas on constitutional orders and the kind of state created. Each man presents a theoretical construct called the ideal state expected to resolve class conflicts in the respective countries. Socrates,Aristotle and Plato considered the mixed order the best kind of constitutional order for the state. All three of the writers wrote at a time when the Greek city states confronted class conflicts. The ruling class or aristocrats successfully suppressed the rights of the common people. These Greek societies were ruled by the wealthy land owners, agricultural elites, and industrial elites. The confrontation between the rich and the poor kept the Greek societies in persistent corruption. The Greek scholars wrote in response to the desire to create stability in the state. It is essential to decide whether the mixed constitution provided a solution to the class conflicts. The rivalry between the ruling class was economic in nature.

The writers of the classics introduced the concept of mixed constitution as a solution to end the oppression of the common people. The new state and constitu-

tional order was headed by the oligarchy. The oligarchy symbolized the wealthy few. While the early political philosophers discussed the promotion of human rights, the destiny of the country was placed in the hands of economic elites. This oligarchy representing an economic elite were only concerned with their personal interests. They made the mistake of creating a society that is elite and classist in nature. The new state under the mixed constitution facilitates the economic desires and personal interests of the ruling class in the oligarchy. Corruption is eliminated by giving the scholar-king complete power to end dissidence with force. The new society does not reflect an egalitarian society. The society is dominated by the large property owners. The constitutional order created by the writers of the classics represents a constitution utilized to benefit economic concessions.

Hobbes, Locke, Machiavelli, and Rousseau created ideal states under the tutelage of a sovereign, democratic government representing the masses through a social contract, princedom, and a community government interpreted in the general will of all. These political philosophers also wrote in quest of a society with stability and no corruption. They confronted the same problem of class conflicts between the ruling class

and the oppressed class. The political philosophers did not address the economic factors responsible for a society divided on class criteria.

The ruling class maintained its power and status in society with no restrictions placed on them by the new constitutional orders.

The theoretical solutions of community government princedom, social contracts and omnipotent legislators presented no changes in the economic and social distance between the oppressor and oppressed. The actual state remained elitist and classist with no signs of an egalitarian society. The large property owners remained the dominant economic and social figures within the state. The common good of the society became a theory never implemented into the actual state.

The dominant political elites of political philosophers like the sovereign, democratic leader and assembly prince and the omnipotent legislators were representatives of the ruling class concerned with material possessions. Their actual state reflected aristocracies and oligarchies since wealth determined the destiny of the actual state. They discuss the need to protect human rights without effectively creating a model to protect against the injustices of a classist society. None of

the political writers create a government eliminating the economic greed creating conflict between the rich and poor. The new states and its constitutional order becomes submissive to the interests of elites.

The desire to maintain a society and a state submissive to class interests was typified by the extensive debates in the state conventions to ratify the Constitution. New York and Virginia became the last states to ratify the new Constitution. Both states were concerned with the capability of the new Constitution and the Congress to regulate industrial and commerical activities without affecting profits. While the new Constitution could have been ratified without New York and Virginia, there was a fear that the absence of the two states would place their commercial interests in jeopardy. The debates portrayed the large interests groupa against small interest groups.

The finished product was a Constitution accountable to the larger commercial and industrial interests. The new Constitution was wrapped in a commericl package dictated purely by economic interests.

As the commercial interests of the groups expanded, the corporate grants became the new constitutional and legislative dictator. The corporate giants gained influence over the congressional decisions through economic

contributions to congressional campaigns. After contributing heavily to the finances of the campaigns, the corporations utilized its lobbying power to remind Congressmen of their accountability to them. The giant corporations like General Motors, Standard, Gulf, Lockheed, and ITT use their financial assets to make the state and congressmen servants of their objectives.

The accountability to corporations by the political structures within the electoral process does not end with the Congressmen. It also includes presidents and regulatory agencies. The corporation uses its superior access to capital, information, and technology to manipulate the decisions of presidents and regulatory agencies. The corporation not only possesses effective lobbying power but they also have access to the best legal expertise to advocate the goals of the corporations before the regulatory agencies. Corporate influence over the Congress, regulatory agencies, courts, and judicial supervision permits the corporations to not only attain its goals but also shapes the type of society and state. The end result is a society with socialism for the rich. The needs of the corporate world ascends those of the relatively deprived. The Constitution or the concept of constitutionalism reflects an economic instrument of

corporate elites to increase their financial resources. The constitution is powerless in containing the illegal actions of the corporate giants. The underprivileged people of the country remain relatively deprived.

Another important thesis of the work is that the criminal justice system protects elitism and classism through legal repression of the poor. The American courts, police, and the legal profession combine to create a dysfunctional system with the poor , the victims of injustices. The large percentage of the poor in the nation's jails illustrates the legal repression of the criminal justice system. The economic factor influences the decisions of the courts as the poor leads the list of persons incarcerated in the American jails and prisons. They confront bail discrimination, preventive detention, and harsh penalties.

The constitutional amendments like the right to counsel protection against excessive bail, fair and speedy trial, and the due process clause of the Constitution have been futile as legal instruments against systematic oppression. The Constitution or the concept of constitutionalism is defined and interpreted by the criminal justice system. This becomes very essential when the bail system is attacked and the legal counsel of the poor.

The analysis of the constitutional guidelines by the courts has been dictated by material possessions. The underprivileged minorities have been short changed by American justice through plea bargaining and inadequate legal representation.

The criminal justice system is composed of lawyers concerned mainly with economic opportunity. The minorities who cannot afford adequate representation must settle for the services of the public defenders. The public defenders do not receive the abundant fees found in corporate law. Poverty law does not provide the large fees found in the corporate firms. These are the lawyers expected to protect the constitutional rights of the poor within the criminal justice system. They are the legal technicians placed with the responsibility of utilizing the Constitution and the courts to provide proper bail, fair trials, and adequate legal representation to the poor.

While the poor has confronted bail discrimination a high rate of incarceration and preventive detention, the white collar criminals have resorted to high priced lawyers to buy their innocence. The criminal justice system is a legal institution that places economic needs before human ones. The Constitution and its statutes, provisions, and amendments are implemented by

a criminal justice system influenced by economic status. The Constitution tends to stand as a judicial document utilized by the criminal justice system to promote commercial expansion. The needs of the corporate giants have led to an alliance with the courts to secure their interests. The Constitution can only be effective in protecting the rights of the poor when the Bill of Rights are successfully implemented. It is the task of the criminal justice system to apply the Constitution to secure the liberties of the poor. The criminal justice system utilized the Constitution as a legal repressor to define elitism, classism, racism, and economic opportunity.

The final chapter of the work examines the role of the NBA and other minority changes in bringing social change. The criminal justice system and the legal professions have been socialized to the norms, ethics, values,and standards of the ABA. The lawyers, from the criminal justice system, are products of the ABA. The ABA is a potent interest group concerned with profits. It is the ABA lawyers who set the laws which control the behavior of men. The organization also defines the moral and ethical values of society. The bar is oriented toward corporate advocacy and business or commercial interests because there is more money in corporate employemet. The ABA like other interest groups

strives on economic mobility. The ABA as the leader of the legal profession does not concentrate on humanitarian needs. It utilizes its legal expertise to apply the Constitution to promote its own interests.

The ABA utilizes the Constitution and the law as an economic weapon to increase commercial development and profits. The interest in profits within the corporate world leads to an increase in the salaries of the corporate lawyers. The lawyers within the ABA are professional elites. They use their skills to promote commercial expansion. Elitism, classism, and systematic oppression exist in the society because the ABA and the legal profession is not concerned with self-liberties or due process of the law. They are only concerned with personal gains. The ABA lawyers are the people with the skills to make the Constitution work to provide due process, equality before the law, and adequate defense for the poor.

The formation of the National Bar Association was launched as an organization with the intention of improving the legal assistance to the poor and utilizing the Constitution to provide equal justice to the underprivileged. The NBA depicted the Constitution as a living document capable of eliminating discrimination and economic exploitation.

It is essential to note the fact that the NBA was not an advocate of social change. It was basically a carbon copy of the ABA. It was an interest group and union created as a tool for economic mobility. The organization was striving to reach the individual goals not possible in the ABA. The NBA lawyers were elites just like the ABA lawyers. The cry for social change and concern for community problems was a deceptive tool to attain the size, mass appeal, economic support and prestige to promote the interests.

The NBA evolved as a union for black lawyers who found barriers in the ABA. While the ABA lawyers were finding economic success in corporate firms, the black lawyers suffered a high unemployment among them. The national or state American Bar Association did very little to improve the hiring of black lawyers. The black lawyers were not allowed membership in the ABA until 1912. The black lawyers stayed in the union until 1925 when the National Bar Association was founded. They were frustrated by the fact they were not in leadership positions within the ABA. The president, vice-president, secretary and executive officials were all white. The black members of the bar had no voice on issues or ethics, values, conduct, disbarment, or pro-

fessional ethics of the bar.

The evolution of the NBA allowed blacks to have a union with black leadership. It also served as an alternative organization created to devote its energy to improving the economic opportunity of black lawyers. The NBA lawyers were black capitalists concerned with profits and status. The organization wanted to mobilize its resources to improve the training of the black lawyer on commercial activities. The black lawyer had to find entrance in corporate advocacy. The greatest profits were found in corporate law. The black lawyer formed the NBA because the black lawyers were not finding economic success within the ABA. The greatest barrier to the black lawyer in the ABA was more economic than racist.

While the NBA attacked the ABA for being a legal repressor and racist, the new black union did not provide any solutions or proposals to eliminate systematic oppression. The organization, evolved with concentration on the constitutional enforcement of the Bill of Rights, due process, fair trial and a non-discriminating bail system. The NBA advocated a desire to concentrate on human needs and improving community development within the black community.

The NBA was not successful simply because it was a carbon copy of the ABA. The desire of the NBA to become a vital agent of social change responsive to the needs of the black community was overshadowed by individual needs. The lawyers were more concerned with creating an alternative union to the ABA to enhance their economic livelihood. The lawyers were not concerned with reforming the criminal justice system or making it more accountable to the goals of minorities. The NBA lawyers were in general capitalists like the ABA lawyers. They wanted to create an organization that would increase minority participation in corporate law.

The NBA was a union with no intention of eliminating a classist society producing an immense gap in the living conditions of the rich and the poor. The NBA lawyers were capitalist elites hiding behind the mask of humanism. The NBA had the same fallacy of the ABA designed especially for economic determinism and advancement. The NBA used the rhetoric of humanism and socialist aspirations with no desire to change the systematic oppression of blacks. The NBA lawyers wanted to be incorporated in the capitalist system. The capitalists of the ABA have found abundant profits. The desire to enhance individual profits have left the NBA insensitive to minority needs and constitutional reform.

Organizations like the National Conference of Black Lawyers along with strategic plans like the Rutgers Report and the Movement for People's Lawyers have been futile in the quest for social and constitutional change. The National Conference of Black Lawyers built alliances with National Bar Associations, black lawyers, black law students, Spanish-speaking Americans, NAACP, and the Urban League calling for systematic transformation. These alliances did not bring any changes in the social and economic dilemmas of the black community. These reform alliances lacked the size, funds, resources, and mass appeal to bring constitutional changes or reforms. This allowed the ABA and the criminal justice system to use the Constitution to benefit corporate interests.

The fact that the political philosophers did not create a constitutional order to end class conflicts supports my theory of economic exploitation. The Constitution served to facilitate the needs of the ruling class or the large property-owners. Their mixed Constitution allowed the wealthy few to use the Constitution to promote their economic interests. The actual state remained classist and elitist. The Constitution was an economic beast dressed in humanist clothing. The political philosophers fail to create a constitutional order

dictated by the needs of the common people.

The Founding Fathers did not intend to create a Constitution responsive to human needs. They were capitalists with capitalist interests. The men intended to create a Constitution capable of securing their commercial needs. The convention consisted of lawyers, industrial elites, bankers, merchants, and large land owners. The ratification of the new Constitution became a difficult task because each state wanted a Constitution which did not limit its commercial activities. The final draft of the Constitution represented a document filled with compromises. It was intended to accomodate the wishes of all competing factions.

The economic nature of the Constitution was also exemplified in corporate dominance within the state. The corporate firms have used their superior capital to influence the decisions of presidents, congressmen, regulatory bodies, and the courts. The abundant capital of the corporate giant has led the corporation to defeat the actions of anti-trust suits and regulatory statutes. It has become the dictator of the will of the state. It utilizes financial contributions and lobbying power to remind the candidate to promote its commercial interest. The Constitution promotes commercial activities at the

expense of exploitation because the courts, congress, president, and regulatory agencies interpret the document from an economic perspective.

The criminal justice system has failed to resort to the Constitution to defend the liberties of the poor. The poor confront inadequate legal defense, a discriminating bail system, incarceration, preventive detention and everything but a fair trial because the courts are dictated by economic possessions. The poor defendants cannot afford a lawyer. They are given public defenders who are not concerned with their rights. There is no money in poverty law. The public defender uses these cases as a launching pad to corporate law. The Constitution becomes an economic document that facilitates the impoverishment of the poor. The court becomes a legal repressor and classist institution allowing the rights of the poor to become secondary to those of the corporate world. The due process, fairness of the law, and self-liberties of the Constitution becomes words with no meaning. The liberties, fairness, and due process is bestowed on the wealthy. The poor confront injustice and discrimination in the nation's court. The lawyers of the American Bar Association interpret and defines the Constitution to promote their capitalists interests. The Constitution serves as an economic tool simply because the legal profession is concerned with a judicial

weapon to protect human rights. They are concerned with the profits within the corporate. The Constitution facilitates the economic interests of the society simply because the legal profession utilizes it as an economic weapon. The National Bar Association evolved as an agent of social change and an opponent of the ABA. The organization was not concerned with the legal services of the poor or their impoverishment. It was an interest group with the same capitalist interests as the ABA lawyers. They were concerned with profits and economic mobility. A new organization gave them the chance to concentrate on their economic interests. The NBA lawyers used deceptive symbols such as constitutional reform and community development as the reasons for a new organization. The organization vowed to use the Constitution to protect the liberties and rights of the minorities. The NBA was a union that realized the ABA advanced because the Constitution was a legal weapon to promote their commercial interests. The NBA became a carbon copy of the ABA. The Constitution, ethics, and statutes remained the same.

The reform organizations and strategies like the National Conference of Black Lawyers, Rutger's Plan, and the relevant lawyers have been futile in eliminating legal and constitutional repression of the poor. They

remain the victims of poverty because of a capitalist system responsive to the demands and wishes of the corporate. Reform organizations do not have the size, financial capital, mass appeal, or technology to compete against the wealthy. The Reform organization do not always have the intentions of changing the system. Many organizations only form coalitions with the present economic and political structures. The political philosophies did not present a new state without class conflicts or leadership by economic elites. The corporate world, the criminal justice system, and the political structure combine to utilize the Constitution as an economic beast to preserve capitalist profits and development. In concluding, the Constitution is no doubt an economic document that facilitates the impoverishment of the poor. It serves as an ally of the corporate world to promote commercial development and profits.

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